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International Court of Justice

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THE PRESIDENT: I call upon counsel for the defendant Hess.

DR. von ROHRSCHEIDT (Counsel for the Defendant Hess): May it please the Tribunal, I am speaking here as counsel for the Defendant Rudolf Hess.

The proceedings which have already been opened against Hess--the Court has to decide on the question whether the defendant is capable of being heard or not, and also whether the condition are present which would make him entirely irresponsible.

Personally, the Court has laid down these juristic principles in the opinion, and has asked those who are expressing their opinion--the experts--to say whether, firstly, the defendant is in a state in which he can plead against the charge; secondly, about his mental stability. And the question here was formulated as to whether the defendant is mentally sound or not.

In respect to question 1, is the defendant in a fit state to plead, the Tribunal has asked the experts certain questions as to whether the defendant is sufficiently in possession of his mental faculties in order to understand the proceedings, and whether an adequate defense can be undertaken --that is, whether he can understand evidence given.

The experts to whom this task was entrusted have examined Hess on several different days and given their expert opinion to the Tribunal. I, as his defense counsel must, because it is my duty, after having studied these experts' opinions--I couldn't do it sufficiently thoroughly, because time was short--I personally, after having looked at these documents, and in conjunction with my experience with Defendant Hess in almost daily discussions, am of the opinion that the Defendant Hess is not capable of pleading.

I therefore consider it my duty, and I feel forced to make the following application:

Firstly, I should ask that the proceedings against Hess be temporarily quashed; secondly, in case his inability to plead should be admitted by the Tribunal, I should request the Tribunal not to carry out the proceedings if the Defendant is not there. But in case the Tribunal should consider Hess fit to plead, I should ask for an arbitral expert opinion in order to decide the question.

Before I come to the reasons for my application, I should like to say,

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on behalf of the Defendant, that he, Hess himself, thinks he is fit to plead and would like to tell the Court so himself.

I would now like to give the reasons for my application:

If my defendant--my client, rather--should not be fit to plead, I should like the proceedings against Hess to be temporarily quashed.

I should like to refer to the opinions already submitted to the Tribunal. The experts come to the following result--I should like to call one of them the main expert. This was given by English, Soviet, and American experts, bearing the date of 15 November, 1945. I should like to cite textually from this. In this opinion it is said that the capacity of the Defendant Hess is reduced. That is to say, his capacity to defend himself and to face a witness and to understand the evidence. I have cited this formulation because it is closest to the question put to the experts by the Tribunal.

The opinion says that even if Hess' amnesia does not prevent the defendant from understanding what is going on about him and to follow the proceedings in Court--

THE PRESIDENT (Interposing): Would you speak a little more slowly? The interpreters are not able to interpret so fast.

Would you also refer us especially to those parts of the medical reports to which you wish to draw our attention?

Do you understand what I said?

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DR. Von ROHRSCHEIDT: Yes.

I should like to observe that I haven't got the exact quotations according to the pages of the English text, as I only have the German translation, so I can only do it as I have just said.

The first quotation--

THE PRESIDENT (interposing): You can read the words in German, and they will be translated into English.

Which report are you referring to?

DR. von ROHRSCHEIDT: For the quotation that I gave I was referring to the expert opinion which was given on the 14th November 1945, which was drawn up by the English, Soviet and American delegations, and which included the report of the 17th of November 1945. What I quoted was the following -- may I repeat it?

The passage runs: "The capability of the Defendant Hess is reduced in respect of being able to defend himself, to face a witness, and to understand the details of the evidence given."

THE PRESIDENT: Can you say which of the doctors you are quoting?

DR. von ROHRSCHEIDT: It is the report which, in my copy, is dated the 14th of November 1945, and, as I said, was presumably signed by Soviet, American and English doctors.

Unfortunately, the original copy I did not receive again yesterday evening after I had given it back. That is, I was not able to obtain the original again.

THE PRESIDENT: Have the English Prosecutors got a copy, and can you tell us which it is?

SIR DAVID MAXWELL FYFE: I think I am in the same difficulties as your Lordship. I have copies of four medical reports. At the end of the document headed "Order", it says, "Copies of four medical reports are attached."

The first one of these is signed by three English doctors on the 19th of November.

The second is signed by three American and a French doctor,

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dated the 20th of November.

There is a report signed by three Soviet doctors, dated the 17th of November.

There is one signed by three Soviet doctors and the French doctor dated the 16th of November.

These are the only ones which I have with the Court's order.

THE PRESIDENT: Yes.

I don't know what this report is that you are referring to.

SIR DAVID MAXWELL FYFE: Dr. von Rohrscheidt seems to have an unsigned report of the 11th.

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THE PRESIDENT: Dr. von Rohrscheidt, have you got the four reports which are really before us? I will read them out to you:

The first one I have got in my hand is the 19th of November, 1945, by Lord Moran, Dr. Reece, and Dr. Ruddock. Have you got that? That is the English report.

DR. von ROHRSCHEIDT: I only have this report in the German translation and not in the original.

THE PRESIDENT: But if you have got it in the German translation, that is quite good enough.

Then the next one is dated the 20th of November, 1945, by Dr. Delay, Dr. Nolan Lewis, Dr. Cameron and Colonel Paul Schroeder.

Have you got that?

DR. von ROHRSCHEIDT: Yes, I have that one.

THE PRESIDENT: That is two.

Then, the next one is dated the 16th of November, and is signed by three Soviet doctors and one French doctor, Dr. Delay, dated the 16th of November. Have you got that?

Then there is another report of the 17th, signed by the three Soviet doctors alone, without the French doctor.

Now, will you refer to the passages in those reports upon which you rely?

There is another report by the two English doctors which is practically the same. That is the one I have already referred to, that does not contain the name of Lord Moran on it, dated the 19th of November.

DR. von ROHRSCHEIDT: May the Tribunal please, I think I can shorten this speech to the Tribunal. My view is that all the experts' opinions agree that the capability of the Defendant Hess to defend himself, to face a witness, and to understand the details of the evidence given -- perhaps I should keep exactly to these words in my exposition:-

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If we assume that all the medical opinions are agreed that the defendant Hess is reduced in his capacity for defense, I should, in my capacity as his defense counsel, be convinced that the ability to plead of the defendant Hess should be negatived. The reduction of the capability of the defendant in his defense, which is recognized as a mental defect, as amnesia, recognized by all the experts, shows a mental condition of a mixed kind but anyhow a mental defect, so he should not be considered as fit to plead.

I am of the opinion that this statement made by the medical experts shows, as was stated in the question to the experts, that on account of this mental defect, the amnesia, proper defense for the defendant Hess is not possible. The opinions also assume that the defendant is not actually insane. That is not the important point at the moment because according to the medical opinion it is affirmatively stated, in my opinion, that the defendant is not in a condition to follow everything in consequence of the reduction of his mental capacity.

I, personally -- and I think my own opinion agrees with the medical opinion -- think that the defendant is quite incapable of making himself understood to the extent that one would expect from a mentally normal person, to the extent that one would expect and demand from a mentally normal person.

I consider that the defendant -- I am basing this on my own experience with him -- is not capable of understanding what the Tribunal says to him in such a manner as is necessary for his defense, because his memory is very unreliable. Through his loss of memory he knows neither events which have happened in the past nor the persons who were associated with him in the past. I therefore am of the opinion that the opposite opinion of the defendant himself, namely, that he is fit to plead, is irrelevant. As the reduction of the defendant's capacity, according to medical opinion, will not soon be improved, I am therefore of the opinion

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that the proceedings against Defendant Hess should be quashed.

Whether the treatment proposed by the medical experts, by narcotic analysis, would bring improvement is not certain, nor in what way nor at what time the health of the defendant can be restored. The medical opinions reproach the defendant with refusing to have such medical treatment. The defendant tells me, on the contrary, that he would be ready to undergo such treatment, but he refused the treatment in this case because, first of all, he thinks he is already fit to plead and therefore considers such a cure unnecessary, and also because he is an opponent of such forceful methods, and finally because he is of the opinion that such forced operation just at this time might make him unfit to plead, that is to say, would rather exclude him from the proceedings, which is just what he wishes to avoid.

If the defendant is not capable of pleading, incapable of defending himself, as medical opinion says, and if this state is likely to last for a long time, this would be a condition for temporary suspension of the proceedings against him.

My second application: In case this Tribunal should allow my application and declare the defendant Hess unfit to plead, then, according to Article 12 of the Charter, it is possible to proceed against the defendant in absentia. Section 12 provides that the Tribunal has the right to proceed against a defendant in his absence if he cannot be found, or if this is in the interests of justice or other reasons. Is it then in the interests of justice to proceed against the defendant in absentia ? In my opinion, it is not in accordance with objective justice if actual proofs are available, as they are here, that the defendant's capacity is reduced because of illness and he is hindered in defending himself personally.

Such terrible crimes are laid at the door of the defendant that even the death penalty is to be expected. It is therefore incompatible with objective justice if medical experts say he is not

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capable of defending himself. And according to Paragraph 12 of the Charter, this right in Paragraph 16 of the Charter provides for a defense and also the possibility of bringing personal evidence for his defense, and cross examining any witness, and this is most important for the defense and any exclusion of such a possibility is, in my opinion, not right. Proceedings in absentia would preclude all this, and therefore could not

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be considered just.

If the defendant is reduced in his capacity to defend himself for the reasons already stated, to such a degree then the defendant is not in a position to give his Counsel the necessary information and then to put his Counsel in a position to defend him in his absence.

As the charter has so precisely laid down the rights of the defendants to form their own defense, it seems to me as Defense Counsel unjust to deprive the defendant of these rights because he is hindered by reasons of illness from being there. The possibility of carrying out proceedings in absentia against a defendant must surely be looked upon as an exception which should only be applied against a defendant if he wishes to avoid the proceedings. But defendant Hess has told me and emphasized to me, and he will probably do it to the Tribunal, that he wishes to attend the proceedings, and he will certainly feel it is particularly unjust if he were ready to plead and should be excluded and the proceedings were carried out in absentia.

I therefore request the Tribunal, if it should declare the defendant not competent to plead, that it not proceed in his absence.

Now, one more application: if the Tribunal, against my own opinion and against the opinion which, in my view, is expressed in the medical statements, should consider he is fit to plead, I should ask for one more medical opinion and that this question may be investigated once more, because I have seen from the medical statements already available that the experts have only spoken with Hess for a short time, in one case only for two days, and in any case for a very short period. In a case of such world-wide importance it seems to me necessary that a complete picture should be given.

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For this longer examination would be necessary, perhaps in a suitable hospital, and he observed for weeks at a time. The experts themselves are obviously not quite sure whether the Defendant Hess is mentally ill, even beyond what is admitted; that is, not capable of pleading that he is mentally deficient. This opinion I have gained because all the medical statements emphasize that the accused is not considered fit to plead, that he should be again subjected to a psychiatric examination. I think this suggestion should be followed in accordance with the suggestion made by the psychiatrists who have already examined him. I should therefore plead, if the Tribunal should consider the defendant fit to plead, that the suggestion of psychiatrists should be followed and that another opinion should be taken.

THE PRESIDENT: I want to ask you one question: Is it not consistent with all the medical opinions that the defendant is capable of understanding the course of the proceedings, and that the only illness from which he is suffering is his forgetfulness about what happened before he flew to England?

DR. von ROHRSCHEIDT: Mr. President, it is true that the experts say that the Defendant Hess is capable of following the proceedings. That is true. But they emphasize, on the other hand, that the defendant is not capable of defending himself. In the manner in which the questions were put to the experts, the Tribunal asked the experts to state their views on the following: Is the Defendant mentally sound or not? This question is answered by all experts in the affirmative, that he is mentally sound. But that does not exclude the fact that the Defendant might at the moment be incapable of pleading and in this respect the experts again, referring to the questions put to them -- the Tribunal would like to know whether the Defendant is capable of following the course of the proceedings, can he carry out adequate defense as a witness and understand the evidence?

And there I am of the opinion that the experts, keeping to the question, give the answer that the defendant is not capable of carrying out an adequate defense, to put objections to the witness, or to follow

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the details of the evidence given. That is, I consider, contained in all the experts' opinions.

Looking at the opinion given by the French and American delegations, if I may submit that to the Court, the date 20th of November, "as a result of our said investigations, we find that Hess is suffering from hysteria and loss of memory." Now comes this passage, "The loss of memory is of such a kind that it will not disturb his understanding of the proceedings, but in respect to questions about his past, he will not respond and that would reduce the weight of his defense. Therefore the capability of the accused for defense is reduced."

So from that he should be considered as not fit to plead. And in the medical opinion of the French delegation, signed by Professor Delay, that too says that the defendant can understand everything that goes on around him, but that his amnesia has such an effect on his capability of carrying out his defense, and to understand all the details which refer to his past, that these facts must be looked upon as disturbing. I considered that if one interprets these statements as the experts intended, the experts mean that the Defendant is not insane, he can follow the proceedings but he cannot defend himself because he is suffering from a credible amnesia.

THE TRIBUNAL (Judge Biddle): Do you accept the opinion of the experts?

DR. von ROHRSCHEIDT: Yes.

THE TRIBUNAL (General Nikitchenko): I should like to know the translation. I should like to draw the attention of the defense that he is incorrectly referring to the experts' opinion of the Soviet experts and French expert. Very good translating; not quite correctly. It was a free translation.

DR. von ROHRSCHEIDT: May I read to the Tribunal what my translation says? The translation was made here in the Bureau and was given to me in this translation. May I repeat that the translation in my possession refers to the 16th of November 1945, and was signed

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by the members of the Soviet delegation, and Professor Delay in Paris. Sub-number three:

"At the present moment the Defendant is not insane in the strict sense of the word. His amnesia does not prevent him from following everything that is going on around him. But it affects his capability of carrying out the defense and of remembering all details of the past, and might be disturbing."

THE PRESIDENT: That is all we wish to ask you. Does the Chief Prosecutor for the United States wish to address the Tribunal?

MR. JUSTICE JACKSON: I think General Rudenko would like to open discussion, if that is agreeable.

THE PRESIDENT: Yes. Are you going on?

GENERAL RUDENKO: In connection with the statement made by the defense, and as a result of the Doctors' opinion, I am inclined to say the following: The condition of Hess was examined by experts. These experts appointed by the Tribunal have agreed that Hess is sane and can answer for his actions. The Chief Prosecutors have discussed the results of this according to the orders of the Tribunal and have answered the question of the Tribunal as follows:

One, we have no questions and doubts about the Commission's report. We are of opinion that

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Hess can be tried.

That is the opinion of the Prosecutors. We are finding that the terms stated by the experts, that Hess can be considered sane --

THE PRESIDENT: (Interposing) Will you speak more slowly, please?

GENERAL RUDENKO: We considered that the experts' opinions are quite sufficient for carrying on the decision of the Tribunal to find Hess sane and subject to this Court, and we are asking the Tribunal to sign accordingly the following statement; and the Defense is asking to postpone the proceedings in view of his illness and state. I must say that Defense is citing -- I don't know why, not quite correctly. It is stated here by the Defense that Hess is not able and he is in such condition that he cannot defend himself and understand witnesses, and so on.

It is quite differently stated by the experts. The experts state that Hess is suffering from amnesia and it will not completely affect him in understanding the proceedings. It certainly won't interfere with his understanding of the witnesses. I think that the details of the past period, which Hess probably will not remember, will not interest the Tribunal. The main points which the experts have given in their reports, and which we do not doubt, and which don't raise any doubts by the defense, is that Hess is sane, and if he is sane Hess must be tried, and according to this I consider that the request of the Defense should be refused.

SIR DAVID MAXWELL-FYFE: May it please the Tribunal:

It has been suggested that I might say just a word, and as shortly as the Tribunal desire, as to the legal conceptions which govern the position with which the Tribunal and this Defendant are placed at the present time.

The question before the Tribunal is whether this Defendant is able to plead to the Indictment and should be tried at the present time.

If I might very briefly refer the Tribunal to the short passages

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in the report, which I submit are relevant, it might be useful at the present time. According to the attachments to the Order, which I have, the first report is that signed by the British Doctors on the 19 November, 1945. And in that report, I beg the Tribunal to refer to Paragraph 3, in which the signatories say: "At the moment he is not insane in the strict sense. His loss of memory will not entirely interfere with his comprehension of the proceedings, but it will interfere with his ability to make his defense and to understand details of the past, which arise in evidence."

The next report is that signed by the American and French Doctors, and in Paragraph One, the Tribunal will see: "We find, as a result of our examinations and investigations, that Rudolf Hess is suffering from hysteria, characterized in part by loss of memory. The nature of this loss of memory is such that it will not interfere with his comprehension of the proceedings, but it will interfere with his response to questions relating to his past, and will interfere with his undertaking his defense."

If the Tribunal will proceed to the third report, signed by the Soviet Doctors, at the foot of Page 1, of the copy that I have, there is a Paragraph beginning "Psychologically--", which I submit is of importance -- "Psychologically, Hess is in a state of clear consciousness. He knows that he is imprisoned at Nürnberg, under indictment as a war criminal; has read and, according to his own words, is acquainted with the charges against him. He answers questions rapidly and to the point. His speech is coherent. His thoughts formed with precision and correctness and they are accompanied by sufficient emotionally expressive movements. Also, there is no kind of evidence of paranoia. It should also be noted here, that the present psychological examinations, which were conducted by Lt. Gilbert, Doctor of Medicine, and of the testimony, is that the intelligence of Hess is normal and in some instances, above average. His movements are natural and not forced."

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Now, if I may come to the next report, I am sorry-- the report which is signed by the three Soviet Doctors, and Professor Delay of Paris, dated the 16, which is the last in my bundle, and that says in Paragraph 3:

"At present he is not insane in the strict sense of the word. His amnesia does not prevent him completely from understanding what is going on around him, but it will interfere with his ability to conduct his defense and to understand details of the past, which would appear as factual data."

I refer, without quoting, because I do not consider that they are of sufficient importance on this point, to the explanation of the kind and reason of the amnesia which appeared in the Soviet report, dated the 17 November, under the numbers One, Two and Three, at the end of the report. But I remind the Tribunal that all these reports unite in saying that there is no form of insanity.

In these circumstances, the question in English law, and I respectfully submit that to the consideration of the Tribunal as being representative of natural justice in this regard, is, in deciding whether the Defendant is fit to plead, whether the Defendant be insane or not, and the time which is relevant for the deciding of that issue is at the date of the arraignment and not at any prior time.

Different views have been expressed as to the party on whom the onus of proof lies in that issue, but the latter, and logically the better view, is that the onus is on the Defendant, because it is always presumed that a person is sane until the contrary is proved.

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Now, if I might refer the Court to one case which I suspect, if I may so use my mind, has not been absent from the Court's mind, because of the wording of the notice which we are discussing today, it is the case of Pritchard in 7 Carrington and Pike, which is referred to in Archibold, Criminal Pleading on the 1943 edition, at page 147:

In Pritchard's case, where a prisoner arraigned on an indictment for felony appeared to be deaf, dumb, and also of non-sane mind, Baron Alderson put three distinct issues to the jury, directing the jury to be sworn separately on each: Whether the prisoner was mute, of malice, or by the visitation of God, (2) Whether he was able to plead; (3) whether he was sane or not. And on the last issue they were directed to inquire whether the prisoner was of sufficient intellect to comprehend the course of the proceedings of the trial so as to make a proper defense, to challenge a juror, that is, a member of the jury, to whom he might wish to object and to understand the details of the evidence; and he directed the jury that if there was no certain mode of communicating to the prisoner the details of the evidence so that he could clearly understand them, and be able tpoperly to make his defense to the charge against him the jury ought to find that he was not of sane mind.

I submit to the Tribunal that the words there quoted, "to comprehend the course of the proceedings of the trial so as to make a proper defense", emphasize that the material time, the only time which should be considered, is whether at the moment of plea and of trial the defendant understands his charge against him and the evidence by which it is supported.

THE PRESIDENT: And does not relate to his memory at that time.

SIR DAVID MAXWELL-FYFE: That is, I respectfully agree with your Lordship, it does not relate to his memory. It has never, in English jurisprudence, to my knowledge, been held to be a bar either to trial or punishment, that a person who comprehends the charge and the evidence has not got a memory as to what happened at the time. That, of course, is entirely a different course which does not arise either on these reports or of this application.

As to what was the defendant's state of mind, no one here suggests

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that the defendant's state of mind and the action charged were committed was abnormal, and it does not come into this case.

THE PRESIDENT: He will, it seems to me, be able to put forward his amnesia as part of his defense.

SIR DAVID MAXWELL-FYFE: Certainly my Lord.

THE PRESIDENT: And to say, "I should have been able to make a better defense if I had been able to remember what took place at the time".

SIR DAVID MAXWELL-FYFE: Yes, sir. If I might compare a very simple case within my experience, and I am sure within the experience of members of the Court where this has arisen scores of times, in English courts, after a motor accident when a man is charged with manslaughter or doing grevious bodily harm, he is often in the position of saying, "because of the accident my memory is not good, or fails as to the exact charge". No one has ever suggested that it could be a matter of relief from criminal responsibility. I hope that the Tribunal will not think that I have occupied too much of their time, but I thought it was useful just to present the matter on the basis of the English law as I understand it.

THE TRIBUNAL (Mr. Biddle): So I can understand you, one of the tests under the Pritchard case is whether or not the defendant can make a proper defense?

SIR DAVID MAXWELL-FYFE: With the greatest respect, will the doctor read the preceding words. They say, "When the prisoner was of sufficient intellect to comprehend the course of the proceedings of the trial so as to make a proper defense."

THE TRIBUNAL (Mr. Biddle): And would you interpret that to mean that this defendant could make a proper defense under the procedure of the trial if you also find it a fact, which you I think, do not dispute, and which you quoted in fact, that although not insane -- now I quote: "He did not understand, or rather his amnesia does not prevent him completely from understanding, what is going on around him but it will interfere with his ability to conduct his defense, and understand details of the past." You don't think that is inconsistent with that finding?

SIR DAVID MAXWELL-FYFE: I am submitting it is not. It is part of his defense, and it may well be "I don't remember anything about that at all".

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And he could actually say from my general behaviour or from other acts which I undoubtedly have done, it is extremely unlikely that I should do it. That is the defense which is left to him. And he must take that defense, and it is my submission.

THE TRIBUNAL (Mr. Biddle): So even if we assume for the

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purpose of argument that his amnesia is complete, and that he remembers nothing that occurred before the indictment though not understanding the proceedings, you think he should be tried?

SIR DAVID MAXWELL-FYFE: I submit he should be tried. That is my submission as a legal position. I especially didn't discuss--of course the Tribunal will appreciate that--I didn't discuss the quantum of amnesia here because I am not putting that to the Tribunal, I wanted to put before the Tribunal the legal basis on which this application is posed. Therefore I accept readily the extreme case which the learned American judge put to me.

THE TRIBUNAL (Mr. DeVabres): I ask in what period the real amnesia of Hess applies. He pretends to have forgotten facts which occurred more than fifteen days ago. It may be simulation or, as they say in the report, it may be real simulation. I would like to know if according to the reports Hess has really lost his memory of facts, which are referred to in the Indictment.

SIR DAVID MAXWELL-FYFE: The facts which are included in the Indictment, the explanations that the doctors give as to his amnesia, are most clearly set out in these paragraphs of the Soviet report, that is the third report dated the 17th of November 1945, page two, and the numbered paragraphs one to three. They say first:

"In the psychological personality of Hess there are no changes typical of the progressive schizophrenic disease. That is, there are no changes typical of a progressive double personality developing from which he suffered periodically while in England. I am sorry, therefore, the delusions from which he suffered periodically while in England can not be considered as manifestations of a schizophrenic paranoia, and must be recognized as the expression of a psychogenic paranoia reaction, that is, the psychologically comprehensible reaction."

Now I ask the learned French judge to note the next sentence. "Of an unstable personality to the situation, the failure of his mission, arrests and incarceration. Such is the interpretation of the delirious statements of Hess in England as bespoken by the disappearance, appearance, and repeated disappearance, depending on external circumstances which affected the mental

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state of Hess."

Paragraph two: "The loss of memory by Hess is not the result of some kind of mental disease, but represents hysterical amnesia, the basis of which is a subconscious inclination towards self defense." Now I ask the learned French judge to note again the next words: "As well as a deliberate and conscious tendency towards it. Such behavior often terminates when the hysterical person is faced with an unavoidable necessity of conducting himself correctly. Therefore the amnesia of Hess may end upon his being brought to trial.

Three: Rudolf Hess, prior to his flight to England, did not suffer from any kind of insanity, nor is he now suffering from it. At the present time he exhibits hysterical behavior with signs of--and again I ask the learned French judge to note this point--with signs of a conscious intentional simulated character which does not exonerate him from responsibility under the Indictment."

The last sentence is a matter for the Tribunal. But in these circumstances it would be impossible to say that the amnesia may continue to be complete or is entirely unconscious. That is deliberately avoided by the learned doctors. Therefore the prosecution do not say that that is the case, but they do say that even if it were complete, the legal basis which I have suggested to the Court is a correct one for action in the matter.

THE PRESIDENT: Thank you, Sir David. Would Doctor Rohrscheidt like to add anything by way of reply? One moment: Mr. Justice Jackson, I gathered from what Sir David said that he was speaking on behalf of you and of the French prosecution, is that correct?

JUSTICE JACKSON: I intend to adopt all that he said. I would only add a few more words, if I may.

THE PRESIDENT: Doctor Rohrscheidt, Mr. Justice Jackson has something to say first of all.

JUSTICE JACKSON: I adopt all that has been said, and will not repeat. We have three applications before the Tribunal. One is for another examination. I will spend very little time on that. I think that we have made, up to this point with these examinations, medical history in having seven

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psychiatrists from five nations who are completely in agreement. An achievement of that kind is not likely to be risked.

The only reason suggested here is that a relatively short time has been devoted to the examination, but I suggest to your Honors that that is not the situation, because there have been available the examinations and observations and medical history during the incarceration of Hess in England, extending from 1941, and the reports of the psychiatrists of the American Forces since he was brought to Nurnberg, and they all agree. So that there is a more complete medical history in this case than in most cases.

The next application was as to trial in absentia. I shall spend no time on that, for there seems to be no occasion for trying Hess in absentia if he shouldn't be tried in his presence. If he is unable to be tried why he simply shouldn't be tried at all. That is all I can see to it.

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I would like to call your attention to the one thing in all this, the one thing, on which any case can be made here for postponement. That is the statement with which we all agree: That Hess' condition will interfere with his response to questions relating to his past and will interfere with his undertaking his defense. Now, I think it will interfere with his defense if he persists in it, and I am sure that counsel has a very difficult task. But Hess has refused the treatment, and I have filed with the court the report of Major Kelly, the American psychiatrist, in whose care he was placed immediately after he was brought here.

He has refused every single treatment that has been suggested. He has refused to submit to the ordinary things that we submit to every day, blood tests, examinations, and says he will submit to nothing until after the trial. The medication which was suggested to bring him out of this hysterical situation--every psychiatrist agrees that this is simply a hysterical situation if it is genuine at all--was the use of intravenous drugs of the barbital series, either sodium amytal or sodium phenotal, the ordinary sedative that you perhaps take on a sleepless night. We did not dare administer that, to be perfectly candid, against his objection, because we felt that however harmless--and in over a thousand cases observed by Major Kelly there has been no ill effect although some cases are reported where there has--we felt that if should be struck by lightning a month afterward it would still be charged that something that we had done had caused his death; and we did not desir to impose any such treatment upon him.

But I respectfully suggest that a man cannot stand afar from the Court and assert that his amnesia is a defense to his being tried, and at the same time refuse the simple

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medical expedients which all agree might be useful.

He is in the volunteer class with his amnesia. In England, as the reports show, he is reported to have made the statement that his earlier amnesia was simulated. He came out of this state during a period in England, then went back to it. It is now highly selective. That is to say, you can't be sure what Hess will remember and what he will not remember. His amnesia is not of the type which is a complete blotting out of the personality, of the type that would be fatal to his defense.

So we feel that so long as Hess refuses the ordinary, simple expedients, even if his amnesia is genuine, that he is not in a position to continue to assert that he must not be brought to trial. We think he should be tried, not in absentia but in these proceedings.

THE TRIBUNAL (Mr. Biddle): Isn't Hess asserting that he wants to be tried?

JUSTICE JACKSON: Well, I don't know about that. He has been interrogated and interrogated by us, as have th co-defendants, and I wouldn't attempt to say what he would now say he wants. I haven't observed that it is causing him any great distress. Frankly, I doubt very much if he would like to be absent, but I wouldn't attempt to speak for him.

THE PRESIDENT: Does Mr. Dubost wish to add anything?

DR. ROHRSCHEIDT: May I just say a few words to the Tribunal to make my point of view clear once more?

As defense counsel of the defendant Hess this is my point of view. First, factually, the defendant Hess, according to the reports of the doctors which all agree, has a mental defect.

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Secondly, the accused Hess is suffering from amnesia, which again all medical experts admit exists. This is merely remarked in the report, whether this amnesia is paranoiac or psychogenetic. They are all agreed that this amnesia is on a pathological basis. The result is that the defendant is not insane but has a mental defect. From that emerges, I think, in a legal sense

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that the defendant cannot state that he cannot be made responsible for his actions, but presumably, when the deeds were committed he was certainly not mentally insane. But there is a difference, according to German law at any rate, whether the defendant is at the moment in a position to follow the trial, that is, whether he is fit to plead. This question should, in my opinion, as I have already said, on the basis of the medical reports, be negativated. He is not capable of being tried.

The Tribunal may be doubtful of the answers of the experts. It is difficult to understand whether the defendant is actually restricted in his capability of defending himself or whether he can have an adequate defense. I think that possibly this point should be stressed: The loss of memory is affirmed by all the experts, and it would seem to me that he is not capable of making adequate defense.

One other point: He may be able to defend himself, and seem externally, he can follow the course of the proceedings, but he cannot defend himself adequately, that is, in the same way as a person who is in full possession of his normal senses.

May I perhaps add one word. I have already explained that the defendant has expressed the wish to me that he would like to attend the trial, as he does not feel himself unfit to plead, but that, in the opinion of the defense, is completely irrelevant.

In respect of the consequences as foreseen by the American prosecutor, that the defendant has refused to be treated by narcotic means, that is not a question of truculence, but he refused it because he was afraid that the intravenous injections at this particular moment might, in his weakened state, make him incapable of following the proceedings, which is exactly what he did not want.

I have already mentioned that he himself thinks he is sane, and therefore he did not need any intravenous treatment. The defendant Hess also told me that he has an internal abhorrence of such means, and Hess, in the unhappy times of the National Socialist regime, was always for the natural methods of healing. He even founded the Rudolf Hess Hospital in Dresden, which is conducted on natural, not medical, means.

JUSTICE JACKSON: May I make one observation, Your Honors?

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THE PRESIDENT: Yes.

JUSTICE JACKSON: The argument illustrates the selectivity of the memory of which I spoke to you. Hess apparently can inform his counsel about his attitude toward this particular matter during the National Socialist regime. His counsel is able to tell us how he felt about medical things during the National Socialist regime, but when we ask him about anything in which he

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participated that might have a criminal aspect, the memory becomes bad. I hope that the Court has not overlooked the statement of the matters that he does well recollect.

DR. ROHRSCHEIDT: May I make a correction?

THE PRESIDENT: It is unusual to hear counsel in a second reply, but as Mr. Justice Jackson has spoken again we will hear what you have to say.

DR. ROHRSCHEIDT: I would merely like to observe that I was misunderstood. It was not the defendant who told me that he was an adherent of natural medicine, and in such a way proved that he had retained his memory, but it was I who, from my own memory, ascertained this, and I know that he was. I gave that as my opinion and my experience in order to show that he has an intellectual aversion to medical operations, but this remark was not based on memory of the defendant Hess but on my own memory.

THE PRESIDENT: Dr. Rohrscheidt, the Tribunal would like, if you consider it proper, that the Defendant Hess should state what his views on this question are.

DR. ROHRSCHEIDT: As his defense counsel, I have certainly nothing to say against it, and I think it would be the defendant's own wish, and the Tribunal would then be in a position to judge what mental state the defendant is in. He can speak as to whether he considers himself fit to plead from where he is.

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THE DEFENDANT HESS: Mr. President, I would like to say this: At the beginning of the trial of this afternoon's proceedings I gave my defense counsel a note that I am of the opinion that these proceedings could be shortened if one would allow me to speak myself. What I say is as follows:

In order to anticipate any possibility of my being declared incapable of pleading, although I am willing to take part in the rest of the proceedings with the rest of them, I would like to give the Tribunal the following declaration, although I originally intended not to make this declaration until a later point in the proceedings:

My memory is again in order. The reasons why I simulated loss of memory were tactical. In fact, it is only that my capacity for concentration is slightly reduced. But in consequence of that, my capacity to follow the trial, my capacity to defend myself, to put questions to witnesses or even to answer questions--these, my capacities, are not influenced by that.

I emphasize the fact that I bear the full responsibility for everything that I have done or signed as signatory or co-signatory. My attitude, in principle, is that the Tribunal is not competent--is not affected by the statement I have just made. Hitherto in conversations with my official defense counsel I have maintained my loss of memory. He was, therefore, in good faith when he asserted I lost my memory.

THE PRESIDENT: The trial is adjourned.

(Whereupon at 1830 hours the hearing of the Tribunal adjourned to reconvene at 1000 hours on 1 December 1945).

File copy

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Official transcript of the International Military Tribunal, in the matter of: The United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics, against Hermann Wilhelm Goering, et al, Defendants, sitting at Nürnberg, Germany, on 30 November, 1945, 1400-1630, Lord Justice Lawrence, presiding.

THE PRESIDENT: Yes, Colonel Amen.

(Erwin Lahousen resumed the stand and testified further as follows:)

BY COLONEL AMEN:

Q Prior to the luncheon recess you were testifying about a conference in 1941 with Reinecke and others. Prior to that conference did Canaris tell you what kind of appeal to make to those present at the meeting?

A Before the discussion Canaris said, as I have already said, that I should use arguments in order to reduce the consequence of the case and also that I should not use arguments of a humanitarian nature.

Q And now will you explain to the Tribunal, to the best of your recollection, exactly what happened and what was said in the course of that conference?

A The discussion was opened by General Reinecke, and he explained these orders in the manner in which I described them before the recess. He said that these measures were necessary, and said it was particularly necessary that this idea should also be made clear to the Wehrmacht, and particularly to the officers as they apparently were still having ideas which belonged to the Ice Age.

Q What views did you present at this conference?

A According to my instructions from the Amt Ausland's Abwehr and as representative of Canaris, and in

H0011-0031

the main I pointed out, first of all, the most unfavorable effect of such measures on the troops, particularly on the Front troops, that they would never understand such orders, particularly not the simple soldier. Besides, we had reports that the executions were sometimes carried out before their eyes.

Secondly, I brought forward the objections of my office in regard to activities which referred to the office itself, the effect of these measures on the enemy, that is, practically speaking, the hindering of deserters, to prevent Russians from deserting, and who were surrendering without any opposition; and then the great difficulties which the Abwehr Division had in fighting agents, that is, people who for any reason had voluntarily kept themselves prepared to help.

Q In order that this may be clear on the record, because I think there was quite a bit of confusion in the translation, I want to point up one or two of those arguments again. What did you say at this conference about the effect of the execution of these orders on Russian soldiers?

A I pointed out, first of all, that through these orders some elements among the Russian soldiers were inclined to surrender and were prevented from doing so. Secondly, that people who for any reason had offered their services to the Abwehr would also be prevented by these measures. And that, taking it all together, above all, the opposite effect would be attained from that which they had desired, and that the resistance of the Russians would be increased to the utmost.

Q And in order that we may be perfectly clear, what did you say about the effect of the execution of

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these orders on the German troops?

A I said that from several reports from the Front we had that the effect on the morale and on the discipline of the troops was terrible, devastating.

Q Was there any discussion about International Law at this conference?

A No. In this connection there was no discussion of International Law. The manner of selection of the prisoners of war was particularly stressed. It was completely arbitrary, apart from the order in itself, the general order itself.

Q We will get to that in a moment. Were your views accepted at this conference?

A My views were the views of the Amt Abwehr, which I was representing, and were opposed in the sharpest possible manner by Mueller, who with the usual cliches rejected the arguments that I had produced, and who made the sole concession that the executions, in order to consider the feelings of the troops, should not take place in the face of the troops but at a secret place. He also made a few concessions in the question of the selection, which was completely arbitrary and was just left to the commander of whatever detail it was.

Q And subsequent to this conference did you learn whether an order was issued with respect to having these killings take place outside the sight of the German troops?

A Except for Mueller's acceptance, which I have just reported, I heard nothing more about it; not till now in an order that was shown to me have I seen the result of this statement.

Q Was there a conversation at this conference about the manner in which these orders for the killings were being

H0011-0033

executed?

A Yes; in the course of discussions the whole question was discussed and also the manner in which these executions were carried out, according to my recollection, by the Kommando of the SD; that the SD had to make the

H0011 - 0034

selection and the places where the prisoners were to be assembled and arrange about the executions.

Reinecke also discussed certain measures regarding the treatment of the Russian prisoners of war in camps. Reinecke in a very sharp form supported Mueller's arguments and not mine and as strongly as possible, and with very sharp words.

Q Now, will you explain to the Tribunal from what you learned at this conference the exact manner in which the sorting of these prisoners was made and in what way it was determined which of the prisoners should be killed?

A The prisoners were selected by special commands of the SD and peculiar and completely arbitrary points of view. The leader of these Einsatz Kommandos took note of racial marks, particularly of course any Jews or Jewish types or any others that were looked upon as racially inferior, and those were selected for execution. The other leader of the SD selected the people according to their intelligence. The third had some other views, usually most peculiar, so that I felt obliged to put the question to Mueller "According to what principles does this selection take place? Has it anything to do with the height of a person or the size of his shoes?"

Mueller was very emphatic in rejecting these and any other objections, and Reinecke took over the same point of view as Mueller. The meaning of what I said was that the Ausland Abwehr wanted to make matters easier, and he took no note of what I said.

Q And had you received knowledge about the manner in which these orders were executed through official reports which you received?

A We were currently informed of what was happening by the organs either from the front or from the camps. Officers of the Abwehr Division were in the camps, and in this way, through the normal service channels, we were informed orally of all these measures and of their effects.

Q Was the information which you received secret and confidential information not open to others?

A The information was confidential in the same way as almost anything

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that came to our ears by the normal channels. Practically, however, they were known to large circles of the Wehrmacht, these things that happened in the camps, particularly in the selection.

Q Now, at this conference did you learn anything from Reinecke with respect to the treatment which Russian prisoners generally were to receive in prison camps?

A In this discussion the treatment of Russian prisoners in the camps was discussed by Reinecke, and Reinecke was of the opinion that in the camps the treatment must not be the same as the treatment of prisoners of war of the Allies, but here too, according to the principles already explained, their treatment must be carried out. The camp guards were to be furnished with whips, and they were to have the right at the very slightest sign of anybody attempting to escape or anything else which they did not desire, the arms were to be used.

Q Besides the whips, what other equipment were the Stalag guards given?

A Those are details which I do not remember for the moment. I can only say what was mentioned in these discussions.

Q What, if anything, did Reinecke say about the whips?

A Reinecke said that the guards must use whips or sticks or whatever it was.

Q Now, through official channels did you learn of an order for the branding of Russian prisoners of war?

THE PRESIDENT: Colonel Amen, I think you should refer to them as "Soviet", not "Russian" prisoners.

COLONEL AMEN: Yes, Your Honor.

BY COLONEL AMEN:

Q Did you learn of such an order?

A In one of the discussions with the Abteilungschef at which most of the divisional chiefs were present, yes.

Q Do you know whether any protests were made with respect to that order?

A A very sharp protest was made immediately when the order became

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known. When the intention was made known of branding these prisoners, a very sharp protest was made at once. It was Buerckner who made the protest.

Q What, if anything, did Canaris tell you with regard to this order?

A Canaris told us that the question had already been treated in a medical opinion, that it was madness to treat

H0011-0037

this in a medical opinion. That was the main thing that was said in this discussion.

Q What information, if any, did you receive through official channels regarding plans to bring Soviet prisoners back to German territory?

A In the same connection and in the same circles, that is, in discussions between Canaris and the chiefs of his divisions, I know that it had been planned to bring back prisoners into Germany, but that these projects were suddenly stopped, and I remember that this was at the order of Hitler himself. One of the reasons was that these prisoner could not be accomodated and could not be provided with clothing.

Q I am not sure but what we missed some of your previous answer. Will you start again to tell us about the change which was made in these orders.

A Will you please repeat the question once more.

Q You referred to a change in the plans to take the Soviet prisoners back to German territory. Is that correct

A Yes, they were not brought back into Germany.

Q And what was the result of this action, namely of their not being brought back at the direct order of Hitler?

A The result was as I described just now.

Q But I want you to repeat it because we lost some of the answer in the interpreting process. Pleas just repeat if again.

A The prisoners, great masses of them, could not be cared for where they were outside the country. They could be accomodated; they couldn't be fed; they couldn't be medically attended, and so great masses of them were without food or proper food, without any medical attention, without proper accomodation, mostly on the bare ground. A great

H0011-0038

many of them died. Epidemics broke out! There was even cannibalism. That is, some people, because they were starving, ate other human beings.

Q Were you personally at the front to observe these conditions.

A I made several journies with Canaris and I saw some of these things that I have just described with my own eyes. These impressions that I had at the time are to be found in my notes.

Q Did you also obtain information as to these matters through official channels of the Abwehr?

A Yes, I received information from my own department and from the Ausland's Abwehr.

Q From you official information, to what extent was the Wehrmacht involved in the mistreatment of these prisone

A According to my information, the Wehrmacht at least knew about these matters which referred to prisoners of war. Executions were matters for the SD and the Reichssicherheitshauptamt.

Q But isn't it a fact that the prisoner of war camps were entirely under the jurisdiction of the Wehrmacht?

A The prisoner of war camps were within the jurisdiction of the Supreme Commander of the Wehrmacht.

Q But before they were placed in these camps, the Special Purpose Kommandos of the SS were responsible primarily for the executions and the selection of the peopl to be executed, is that correct?

A Yes.

Q Did you receive through official channels information regarding the existence of an order for the killing of British Commandos?

Q Yes.

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Q What action, if any, did Canaris or yourself take with respect to this order?

A The order, as far as I remember, even the intention that such an order was going to be issued, was discussed in our circle, that is Canaris and the section chiefs. We were all, of course, absolutely agreed on its rejection apart from the aspects of international law because the Amt Ausland's Abwehr-- my division was Brandenburg-- would have had to fulfil such orders. Therefore, as chief of the section which was connected with the regiment, and for which I felt myself responsible in carrying out the repressive measures which were expected as a result of this order, I made the strongest protest possible against this order.

Q Did you personally assist in the drafting of these protests?

A I know that twice, once as soon as the order was issued, either in written or oral form, and a second time, after executions had been carried out as a result of this order, Canaris again by Amt Ausland through Buerckner, made protest against this order. I contributed to one of these written protests in the interests of my own section, Regiment Brandenburg, which was rather like the Kommandos.

Q To whom in the ordinary course did these protests go?

A The protests went to Canaris' superior officer, that is to say, the chief of the OKW.

Q Who was that?

A That was Keitel.

Q Did these protests in the ordinary course go also to Jodl?

A I can't say, but it is possible.

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Q Now, will you tell the Tribunal what the grounds of the protests which you made were.

A The basis was, above all, that it was against international law that soldiers, that is to say, not agents or spies, but soldiers who were shown to be such, should be killed after they had been taken prisoner. That was the main point. My division supported that idea because my division was made up of soldiers and would have to carry out that kind of task itself.

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Q Were there any other grounds urged in protest against these orders?

A Certainly. Other reasons were also mentioned according to the interest of the different divisions which were affected by these orders. For the Amt Ausland, it was the point of view of international law. The Abwehr Division was particularly interested in the interrogation of prisoners who had been taken, but never interested in having them killed.

Q Were there any other chiefs of the Abwehr Division who assisted in the preparation of these protests?

A As far as I remember today, no.

Q You mentioned Admiral Buerckner, did you not?

A Yes, Buerckner belonged to the Amt Ausland Abwehr, but he wasn't the chief, but only for the Amt Ausland.

Q Now, have you ever heard of an operation known as "Gustav"?

A The name Gustav was applied to an action or an undertaking very like the one which was demanded in the elimination of Marshal Weygand.

Q Will you tell the Tribunal what was the meaning of Gustav.

A Gustav was the expression used by the Chief of the OKW and referred to the question of General Giraud.

Q When you say the Chief of the OKW, are you referring to Keitel?

A Yes.

Q And are you referring to General Giraud of the French Army?

A Yes, General Giraud of the French Army who, according to my recollection, in the year 1942 fled from Koenigstein.

Q Do you know of any order issued with respect to General Giraud?

A Yes.

Q Who issued such an order?

A The Chief of the OKW. Keitel gave an order of this kind to Canaris, not in writing but orally.

Q How did you come to know about this order?

A I knew of this order in the same way as certain other chiefs

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of the department, Chief of Abwehr Section III, Bentivegny, and a few other officers. We all heard it at a discussion with Canaris.

Q What was the substance of the order?

A The main content of this order was to eliminate Giraud similar to Weygand.

Q When you say "eliminate" what do you mean?

A I mean the same as in the case of Marshal Weygand, that is, he was to be killed.

Q Do you recall the approximate date when this order was given by Keitel to Canaris?

A This order was given to Canaris several times, and several times repeated. I cannot say for certain when it was given for the first time as I was not present myself. It was probably after the flight of Giraud from Koenigstein and it was probably given for the first time to Heydrich in Prague. According to my notes, in the presence of Canaris, this subject was discussed in the presence of Keitel in July of the same year.

Q Well now, what did Keitel first say to you personally about this affair?

A I can't give the exact text, but the meaning was that he proclaimed the intention of having Giraud killed, similarly as in the case of Weygand, and asked me how the matter was progressing.

Q And what did you say to him on that occasion?

A I cannot remember the exact words. I probably gave some evasive answer.

Q Now, was this question later discussed by you at any time?

A According to my recollection, this question was discussed in August. The exact date can be found in my notes. Canaris rang me in my private apartment one evening. Keitel was urging him again, was pressing him about Giraud and the service chiefs were to meet the next day on this question.

The next day the discussion was held and Canaris repeated in this larger circle what he had said to me over the phone the night before.

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That is, he was being continually pressed by Keitel that something must at last be done in this matter. Our attitude was the same as in the matter of Weygand. All of us who were present rejected absolutely this new request to carry out a murder. Canaris was of the same opinion and Canaris thereupon went down to Keitel in order to induce him to leave the Military Abwehr out of all such matters, and as it happened at former times, and as he had already requested earlier, to leave such matters to the SD.

In the meanwhile, while we were all there, I remember Pieckenbrock spoke and I remember every word. He said it was about time that Keitel was told clearly that he should tell Hitler, his Hitler, that we, the Military Abwehr, were no murder organization like the SD or the SS. After a short time, Canaris came back and said it was now quite clear he had convinced Keitel that we, the Military Abwehr, were to be left out of such matters and the rest of it was to be left to the SD.

I must observe here and recall that Canaris had at once when this order had been given, said to me that the execution must be, will be, prevented at any cost. He would take care of that and I was to support him.

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Q I don't think you have yet told us just who was present at this conference?

A The three Abwehr chiefs that were present, Colonel Pieckenbrock, which I have already mentioned; Colonel General Bentivegny, and I. Probably, too, General Oster, and possibly Buerkner, but I cannot remember. In my notes only those three chiefs are mentioned who already rejected the proposal.

Q What was the next occasion when this matter was brought to your attention again?

A A little later, it must have been September, the exact date has been recorded, Keitel rang me up in my private department. He asked me what was happening with Gustav, "you know what I mean by Gustav." I said, "On Gustav, yes, I know." "How is the matter progressing, I must know, it is very urgent." I answered, "I have no information on the subject. Canaris has reserved this matter for himself, and Canaris is not here, he is in Paris." Then came the order from Keitel, or rather, or before he gave the order came one other question. "You know that the others are to carry out the order." By the others, he means the SS or the SD. I answered, "Yes, I know." Then came an order from Keitel once more to inquire how the matter -- how the whole matter is progressing. "I must know it urgently," he said. I said, "Yes". But went at once to the office of the Ausland's Abwehr, General Oster, and informed him what had happened. For his reply of what was to be done by Canaris and me in this extremely painful matter, I told him what Oster already knew, that the Canaris Abwehr had told the SD no words, or what the SD was intending to carry out., that is to say, the murder of Giraud. General Oster advised me to fly to Paris immediately and to tell Canaris, to tell Canaris, and to warn him. I flew the next day to Paris, and in a hotel while we were at dinner in a small -- we were in a small circle, and Admiral Buerkner was present, I told Canaris what had happened. Canaris was horrified and amazed, and for a moment he saw no solution.

During the dinner Canaris asked me in the presence of Buerkner, and presence of other officers, it was Colonel Rudolph, and another man whose

H0011-0045

name I have forgotten, Canaris asked me when Giraudhad fled from Koenigstein, and the next day -- that is, when the assassination of Heydrich had been attempted, and I knew these dates, and told them in part when he had the three dates. He was instantly relieved, and his face which had been very clouded, relaxed. He was certainly relieved in every way. I must say that in particular -- at the three days conference of the Abwehr Heydrich was present. It was a meeting between Amt Abwehr III and the co-ordinating people at the meeting of the Prague.

Canaris then based his whole plan on these three dates. His plan was to attempt to show that Heydrich at that conference had harped on the order to carry out the action. That is to say, his plan was to use the death of Heydrich to wreck the whole proposition. The next day we flew to Berlin, and Canaris reported to Keitel that the matter was quite in order, and that Canaris at the three days conference in Prague had given Heydrich the necessary instructions, and Heydrich had prepared everything, that is, a special purpose action had been started in order to have Giraud murdered, and there that same matter was finished and dropped.

COLONEL AMEN: There was a mistake I think in the translation back a little ways. If you don't mind will you please go back to where you first referred to Heydrich with Canaris, and repeat the story, because I think that the translation was incorrect. In other words, go back to the point where Canaris suddenly seemed relieved, and started to tell you what the apparent solution might be.

THE WITNESS: All these present saw that Canaris was much relieved, as he head from me the three dates. His whole plan is already maneuvered like as they did with Heydrich; to him it was intellectual, simply intellectual combination that he was making of the three dates. And the essential part was the date of the escape of Giraud, and the three day conference. If this conference had taken place before his escape, the combination would probably not have been possible, or it could not be made convincing.

THE PRESIDENT: Colonel Amen, what is the reason for the repition?

COLONEL AMEN: There was a mistake in the record. If it is the wish of the Tribunal, I shall not have him repeat it any further.

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THE PRESIDENT: It seems clear to the Tribunal what was said.

COLONEL AMEN: Very well.

Q What, if anything, happened next insofar as the affair Giraud was concerned?

A Nothing more happened. Later, I only heard very much later that Hitler was first indignant about this escape, and said that the SD had failed miserably, that it had to be written down in the notes of the haupt-quarter. The man who told me this is in the American zone.

Q Were you acquainted with Colonel Rowehls?

A Yes.

Q Who was he?

A He was an officer. He was a colonel of the Luftwaffe group.

Q What was the work of the special squadron to which he was attached?

A He had a special squadron for high flying, and operated together with the Auslands Abwehr reconnaissance, in certain respects over certain states.

Q Were you ever present when he reported to Canaris?

A I was present occasionally.

Q Do you recall what Rowehl told Canaris on those occasions?

A He reported on the result of the reconnaissance flight, and on the first Abwehr -- Amt Abwehr I was responsible for this, and scrutinized these results.

Q Did you know over what territories these reconnaissance flights had been made over?

A They were taken over Poland, and England, and in the southeast -- I cannot say in any greater detail what territory, and what state in the southeast, but I know that this squadron was stationed in Budapest for such reconnaissances.

Q Did you personally see some of these photographs?

A Yes.

Q Now will you tell the Tribunal the dates when you know that these reconnaissance flights over London and Leningrad were being made?

A I can not give the exact date. I only remember being present at the Abwehr with Canaris, or with Bentivegny whowas there sometimes; that this

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reconnaissance flight did take place, and photographic material was furnished, and that the squadron operated upon Hungary airfields, and sometimes they flew back to Berlin. I knew some of the pilots from their activities.

Q What I am going to ask you about now is the year, or years we will say, when these reconnaissance flights were being made?

A In a certain part of 1939 before the beginning of the Polish campaign.

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Q And were these flights being made from Hungary, if you know?

A The Luftwaffe Inspector would have to say that.

Q Do you have in your possession a report of the treatment of the Jews in certain territories?

A Yes, I have a report which probably came to us through Department III, and I have copies made for Canaris and for me, and copies of that report made for Canaris, and a copy for myself.

Q Is that an official report?

A Yes, and it is reported. The files would show from what office it came to us. In this connection Berison is the particular name in connection with this shooting of the Jews. I never know very well.

COLONEL AMEN: Now may it please the Tribunal I should like to offer in evidence a photostatic copy, or copies of the entries made by the witness in every detail, together with a photostatic copy of the report. The originals are here in court, but cannot be lifted out of the box in which they are contained. They are so much damaged by a bomb explosion that if they were to be lifted out of the box, they would be destroyed beyond use, but we have had them photostated, and the photostatic copies are now available. That letter would be Exhibit U.S.A. 80-3047-PS.

THE PRESIDENT: Do I understand, Colonel Amen that only such portions of this document as are read in court will be offered in evidence?

COLONEL AMEN: Well, these have been used by the witness to refresh his recollection.

THE PRESIDENT: Yes, I know they have.

COLONEL AMEN: And none of them have been read in full in court, but they may be so read at any time, sir.

THE PRESIDENT: If you want them to go into evidence as documents, you must read them, of course. Colonel Amen, do you want to use the documents any more than you already used them for the purpose of refreshing the witness's memory?

COLONEL AMEN: I do not, sir, except having used them in this fashion, I now think it is only fair to offer them in evidence for the information and scrutiny of the Tribunal; for my own purpose they have served their

H0011-0049

purpose.

THE PRESIDENT: If the defense counsel wish to see them for the purpose of cross-examination, of course, they may do so.

COLONEL AMEN: Oh, yes, sir. I have offered already sir, to be Exhibit U.S.A. 80-3047-PS.

THE PRESIDENT: But otherwise they may not be put in evidence?

COLONEL AMEN: Correct.

Q As a member of the Abwehr, were you generally well informed on the plans of the German Reich for waging of war?

THE PRESIDENT: From this damaged paper, it seems to contain a report on the execution of the Jews in Borisov.

COLONEL AMEN: Yes.

THE PRESIDENT: That again will not be in evidence unless you read it.

COLONEL AMEN: Correct, sir. We will include that in the offer which I just made to you, that unless what we are offering is desired by the Court, I will not offer it in evidence but only read it.

THE PRESIDENT: Very well, the Court does not desire it.

COLONEL AMEN: Very well, I will repeat the question.

Q As a member of the Abwehr, were you generally well informed on the plan of the German Reich for waging of war?

A Insofar as the office of the Abwehr was concerned in the preparation for these matters.

Q Did it ever come to your attention any knowledge or information which was not available to an ordinary person, or to an ordinary officer in the army?

A Yes, certainly. It belongs to my office.

Q And on the basis of the knowledge which you so obtained, did you in your group come to any decisions as to whether or not the attack on Poland, for example, was an unprovoked act of aggression?

THE PRESIDENT: Well --

THE WITNESS: Would you be kind enough to repeat the question?

THE PRESIDENT: That is one principal question which this court has to decide. You cannot produce evidence upon a question which is within

H0011 - 0050

the province of the court to decide.

COLONEL AMEN: Very well, sir. The witness is now available for cross-examination.

THE PRESIDENT: Is it the Russian Prosecutors wish to ask any questions of this witness?

DIRECT EXAMINATION

by

THE RUSSIAN PROSECUTOR: You have made definite replies to questions, and I should like to have certain details.

Q Am I to understand you rightly that the great Internationalists were under the direction of German Wehrmacht?

A They were Ukranian immigrants.

Q And from these immigrants groups were formed to fight for the Germans?

A The commandos perhaps is not the right expression. They were people who were together in camps, and had had an apparent military training.

Q What was the function of these commandos?

A They were organizations. They came from the Caucasian, they come from the Caucasian Ukrania, and had worked together with the office of the Abwehr.

Q What was the actual function of these troops?

A The troops was assigned to them by their superior officers at the beginning of hostilities. There was the field commando line of officers to which I belonged.

Q What functions did these troops have?

A These commandos were to carry out sabotage of all kind.

Q Otherwise, in what territory?

A That is in those territories in which Germany had entered into war, that is to say, in a concrete case about these matters, to say, particularly in Poland.

Q In this case of Poland, what was the sabotage and other activities?

H0011-0051

A Taking sabotage, it was the wrecking of bridges, and other important military administrations. I have just described the activities in general. That is to say the destruction of important military installations.

Q I am asking you, what else? Whether any militaristic acts as to its commands?

A That the Abwehr officer didn't give them their political, but the Auslands Abwehr, these were given to them by the confidentes service of the Reichs.

Q You have misunderstood me. You are speaking about sabotage, and I was asking you about terroristic acts. Do you understand me. Wasn't there terror? Now, I am not clear. May I again repeat. As well as to sabotage acts, was there any terror acts in there?

A On our part, never.

H0011 - 0052

Q You have told me from our side there was a question of terrorism. From whose side was the question of terror?

A Well, that was the whole point at the time. The military OGPU in various forms was always being asked to use our purely military organization for political or terroristic purposes; for example, as can be shown by notes in the files, in the preparation of the campaign against Poland.

Q Answering the question of whether that Red Army man was looked upon as a logical enemy and was subjected to special measures, what do you mean by special measures? I repeat the question. You have said that Red Army man was looked upon by you--I mean, by the German High Command as a geographical enemy and was to be subjected to special measures. What does it mean? What do you mean by saying "special measures"?

A By such measures I mean all those brutal measures which were taken, which I have already spoken of, and I should like to add that there was much, much more of it than I can say from my after all restricted point of view.

Q You already told the Tribunal that there were special commandos which were picked from the prisoners of war. I understand that the picking was done--one was to be killed and the other one was to go to labor?

A Yes, these special purpose commandos of the SD were concerned with the execution of those selected among the prisoners of war.

Q Was the chief of the commander responsible for the question as to who was to die?

A It was about this subject that we had the discussion with Reinecke. It was the leader of those special purpose squads who had to decide who was to be looked upon as Bolshevistically tainted or not.

Q And he was responsible and had the authority to say what to do with them?

H0011-0053

A. Up to the date of the discussion in which I have participated with Canaris, that was one of the points of this discussion.

Q You have told us about your protest and the protest of Canaris against those orders, and so forth. What were the results of these protests?

A As I have already said, there were very modest results, so modest that you can hardly call them results at all. The fact that executions were to take place out of sight of the troops instead of in sight of the troops, I can hardly call real results.

Q What conversations did you have with Mueller on this subject, and had Mueller made any concessions? You told us when you were asked by General Alexander--You were questioned by Colonel Rosenblith, a representative of the Soviet Union. I am sorry, I made a mistake. Perhaps you will remember your communication to Colonel Rosenblith regarding the conversation with Mueller and the concessions Mueller has made. I shall ask you to tell us that again.

A But I am not quite clear about the name Alexander. I do not know what Alexander means in this connection.

Q Alexander was a mistake on my part. Forget it. I am interested in the question of Mueller about shootings, and so forth.

A I had a very long conversation with Mueller about all these selections. I gave a concrete example for the message; a particular incident was the Crimean Province, that is, with Soviet soldiers who came from the Crimea. Those who were Mohammedans were declared, for certain reasons, to be Jews and were executed; so apart from the brutality of all these measures, that shows what irrational views were responsible for the choice, views that a normal person cannot explain at all. I have already pointed that out.

Q You told us where these measures were carried out.

THE PRESIDENT: He doesn't hear you. Carry on. Go a little bit more slowly.

BY THE RUSSIAN PROSECUTOR:

Q Have you finished your conversation with Mueller?

H0011 - 0054

A No, I didn't quite finish. I had many discussions with Mueller. All the subjects about which I have given evidence were subjects of conversations with Mueller. He was the person responsible, at least in one sector. I submitted, Reinecke gave the decision either from below or from me. I would be grateful if you would tell me what particular points you would like to have explained, and I would gladly repeat it.

Q You have spoken about murders, and so forth. I am interested about the shootings. What did you say about it? How were the shootings to take place after you protested about it?

A He told me in rather a cynical form when the shootings will be done in a separate place, if the troops are so distrubed by it, and if their morale suffers; that was the main meaning of what he said.

Q That was the result of your protest?

A That was the very poor result of our protest.

Q And the last question. Well, the conditions of the concentration camps where Soviet prisoners were taken, mass destruction of the prisoners, it was the order of the German High Command?

A In some sort of cooperation with the competent officers of the Reichshauptamt—I must declare that at the time I did not read the order but only heard of them through discussion with Reinecke, Reinecke as representative of the OKW, and similarly Mueller—it was in these discussions.

Q Excuse me, did you get to know that privately or in official sittings?

A It was in official conversations, as I have already shown. Reinecke was not in the chair. I was not there as "Lahousen",

H0011-0055

but as a representative of the Ausland Abwehr.

Q Well, the orders which you have got to know in these sittings, they have come to you direct from the German High Command?

A They came from the German High Command and from, sometimes, a very high place in the Reich, according to what Reinecke said at these discussions I have not seen it with my own eyes, as I repeatedly declared.

Q But you have heard in these sittings where they were informed by these orders and when they were discussed?

A The discussion, certainly; I have already described this, of course.

Q And in the sittings, as you said, were there questions about murders and burning of cities?

A There was no talk at these discussions about the setting on fire, but the commands that had been given, in respect to the prisoners.

Q About the murders only?

A (No answer)

THE PRESIDENT: Does the French Prosecutor wish to ask any questions?

BY THE FRENCH PROSECUTOR:

Q Who gave the orders for the murder of the commandos?

A I didn't understand that--the destruction of the commandos? What was it exactly that you mean? Presumably the killing of members of the commando troops?

Q Who gave the orders for the execution?

A I did not read the orders myself, but according to what was said in our circles about this subject the idea came from Hitler himself in reorganizing the SD, but who else has helped in the reforming of the SD, I do not know.

Q The Defendants Keitel, Jodl, what orders did they handle; what orders did they give?

A I cannot say that because I do not know it.

Q What are the reasons for these orders, as far as you know?

A The reasons for these orders were, in my opinion---not according to my opinion, but as was said at the time, and I think also was in the order, and I didn't read it--it was supposed to have a prohibitive effect

H0011-0056

in order to crush and paralyze resistance.

Q Who gave the order to have General Giraud executed or murdered?

A I am sorry, Weygand and Giraud. The order to liquidate, that is, to murder Weygand and Giraud, Canaris told me it came to Keitel, but for the rest, through personal observations Keitel made to me in the case of Weygand, in the course of a lecture on the 23rd of December, 1940, at which I was present at this when Canaris was with Keitel, I was told about this order direct. In consequence, when I was asked about the progress of the affair about Weygand, and the fact that in the case of Giraud, the order went from Keitel to Canaris. I heard from Canaris himself, just as the other men who were present, and for the rest, the second time, on the occasion of a lecture when I was with Canaris at Keitel's room in July, 1942. It was communicated to us in much the same way as in the case of Weygand. And lastly, I heard it directly in the telephone conversation which I already described here. I heard it from Keitel in the form that it was a matter of extreme urgency.

THE PRESIDENT: Do you want to ask any questions, Dr. Nelte?

DR. NELTE (Counsel for Defendant Keitel): The witness, Lahousen, has given very important evidence, particularly --

THE PRESIDENT: Are you going to make a speech now?

DR. NELTE: My client, the Defendant Keitel, would like to put numerous questions to the witness after he has had a discussion with me. I therefore ask the Tribunal to allow either that there may be a considerable adjournment now or that at the next session this question may be discussed in cross-examination.

THE PRESIDENT: Very well. You shall have an opportunity to cross-examine at ten o'clock tomorrow. Does any member of the Tribunal wish to ask any questions of the witness now?

BY THE TRIBUNAL (Mr. Biddle):

Q I should like to ask the witness whether the orders for the killing of the Russians and in connection with the treatment of the prisoners were in writing?

A As far as I know, yes, but I did not see these orders myself.

H0011 - 0057

Q. Were they official orders?

A. Yes, they were official orders, but it was the actual order that was brought out in a circumlocutory way. It was explained in words by Reinecke and others. It was in this way that I had my knowledge of these orders. I didn't read the orders myself at the time, but I knew that it was not merely oral arrangements, because I knew that there was something written, but I cannot say whether it was one order or what kind of orders or whether they had signatures, but my knowledge comes from discussions, from reports from which I learned quite clearly the existence of such orders.

Q. Do you know to whom or to what organizations such orders were usually addressed?

A. Orders of this kind, they went principally to the OKW, because it was a question for such matters of prisoners of war which were matters for the OKW, and Reinecke was the representative of the OKW.

Q. So usually the members or some of the members of the General Staff would have known of such orders, would they not?

A. Certainly, according to their contents, many members of the Wehrmacht must have known of the contents of these orders, for the reaction of the Wehrmacht against these orders was tremendous. Apart from the service view, which is what I have reported here in Cassino and elsewhere, these things were discussed a great deal, because all these things were matters which were likely to have the most unfavorable effect on the troops, particularly the front. Officers and high-ranking Officers either did not transmit these orders or sought to evade them in some way and this was discussed a great deal in many places. I have named some of these Officers; some of them are contained in the records. It was not an every-day occurrence, but it was the topic of the day.

Q. And were the orders known to the leaders of the SA and SD?

A. They must have been known to them, for the ordinary soldiers who watched all these proceedings knew it, and even some of the civilian population; civilians came to us, people who came from the front and wounded soldiers who had heard far more details about these matters than I could tell here.

H0011-0058

THE PRESIDENT: General Nikitchenko wants to ask a question.

BY THE TRIBUNAL (Gen. Nikitchenko):

Q You have told us that you received instructions about the murder of prisoners of war and brutal treatment. You received these orders from Reinecke?

A Well, I must correct something that I said. We didn't get the order in the Ausland Abwehr because it had nothing to do with us, but we only knew about it, and we went into these conferences as representatives of the Ausland Abwehr. But we ourselves had nothing to do with the treatment of prisoners of war, and certainly not in this negative sense.

Q Apart from these meetings, the meetings of the high command, were such instructions ever given? Were there any meetings of the high command headquarters about killings and ill-treatment of prisoners of war?

A There certainly had been a number of discussions about this subject, but I was not present at them, so I can't say anything more about it.

Q In the headquarters?

A In the OKW -- in the headquarters.

Q In the headquarters of the German Army?

A Certainly in the OKW where the Abwehr were represented, because our office had nothing to do with prisoners of war in this sense. We were interested in the proper treatment of prisoners.

Q But the meetings were not about treating prisoners, about killing them and murdering? At these meetings, Ribbentrop was also present?

A No, certainly not. These discussions, I mean the one conference about which I have given testimony, took place after the fact. Everything had already happened; executions had already taken place, and the results had already been shown. Protests of all kinds had been made, had come from the front and come from other places. For example, from our own office, Abwehr, these conferences were intended to show

H0011 - 0059

the necessity of giving the reasons for the orders which had already been given, some of which had already been carried out, and these discussions took place after the beginning of operations, after the orders which had been given had already been carried out. All that had been touched upon had already happened and its effect had already been felt. Facts that had already happened were being discussed with the idea of making one more attempt on our part to rectify them.

Q All these reports about results?

A That's what I talked about, and that was the subject of the discussions with Reinecke. I did not take part in the other discussions.

Q At which other meetings had orders been given about killings and burning of towns and villages?

A I must make something clear. Am I being asked about the conference in the Fuehrer's train or the case of Warsaw? According to the entries in the diary, it took place on the 12th of September 1939. The meaning of this order which Ribbentrop gave and which Keitel gave to Canaris, and which was again discussed by Ribbentrop and Canaris, was the cooperation of the national youth organizations in military operations. They had cooperated. The object of this cooperation was to cause revolution in Poland -- to exterminate the Poles and the Jews, that is to say, above all such elements as were always being discussed in these conferences. When Poles are mentioned, the intelligentsia especially is meant, and any persons who would be tokens of resistance. These connections I have already described and it has already been noted in the files. The idea was not to kill Ukrainians but, on the contrary, to carry out these objects together with the Ukrainians. The cooperation had actually occurred in the connection of Ausland Abwehr and these people, who were only about five hundred or a thousand. All this cooperation can be seen by the diary. There was a pure preparation for military sabotage.

Q These instructions were received from Ribbentrop and Keitel?

A They came from Ribbentrop. Such orders which concerned the political contents couldn't possibly . . .

H0011-0060

Q I am not asking you whether they could or could not. I am asking you where they came from.

A They came from Ribbentrop, as is seen from the note in the files. This is the note that I made for Canaris.

THE PRESIDENT: Yes, Doctor.

DR. DIX: I have three short questions. May I put them?

THE PRESIDENT: It is now past four, and we have to hear the requests of the Defendant Hess, and the Court has to be cleared for them. So I think you had better postpone them until tomorrow.

(At this point a short recess was taken.)

File copy

Official transcript of the International Military Tribunal, in the matter of: The United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics against Herman Wilhelm Goering, et al, Defendants, sitting at Nürnberg, Germany, on 30 November 1945, 1045-1230, Lord Justice Lawrence, presiding.

THE PRESIDENT: I call on the Prosecutor for the United States.

JUSTICE JACKSON: Colonel Amen will represent the United States this morning.

COLONEL JOHN H. AMEN: May it please the Tribunal, I propose to call as the first witness for the Prosecution, Major General Erwin Lahousen.

THE PRESIDENT: The Tribunal wish me to state that the evidence of the witness, whom you propose to call, must be strictly confined to the Count with which the United States is dealing, Count One.

COLONEL AMEN: May I have a moment to discuss that with the Chief Counsel of the United States?

THE PRESIDENT: Yes, certainly.

DR. OTTO NELTE: Mr. President: so far as I know --

THE PRESIDENT: Could you state for whom you appear? Do you appear for the Defendant, Keitel?

DR. NELTE: Yes.

So far as I know, there was an agreement reached between the Prosecution and the Defense, namely, an agreement that it should be said ahead of time, if possible, what was to be discussed on the following day. The obvious purpose of this reasonable understanding was, it appears to me, to give the Defense Counsel the possibility to discuss the questions with their clients, and thus expedite the progress of the trial.

H0011-0062

I did not hear that today the witness, Lahousen, was to be summoned by the Prosecution. Also, I did not hear what questions he was to be heard discussing.

This was particularly important, because today, as I believe, we were not to discuss questions, and the witness, Lahousen, was not to be heard regarding questions that have any connection with the address that the Prosecution delivered in the last few days.

THE PRESIDENT: That is the contrary of what I said. What I said was that the witness was to be confined to evidence relating to Count One, which has been solely discussed up to the present date.

DR. NELTE: Does Mr. President wish to say that the Defense, in order that it might have the possibility to subject the witness to cross examination, that the defense shall have the possibility, after interrogation by the Prosecution, shall have a moment to speak with the defendant, so that he shall know what questions are to be put to him? The witness, Lahousen, so far as I recall, has not been mentioned so far in the address by the Prosecution.

THE PRESIDENT: Is that all you have to say?

DR. NELTE: Yes.

THE PRESIDENT: I think the Tribunal would like to hear Counsel for the United States upon the agreement which Counsel for the Defendant, Keitel, alleges, namely, an agreement to the effect that what was to be discussed on the following day should be communicated to the Defendants' Counsel beforehand.

JUSTICE JACKSON: I know of no agreement to inform Defendants' Counsel of any witness, nor of his testimony; nor would I want to make such. There are security reasons involved in disclosing to Defendants' Counsel the names of witnesses, upon which I don't need to enlarge.

H0011 - 0063

I am quite sure we did advise them that they would be given information as to the documentary matters, and I think that has been kept.

H0011-0064

As to witnesses, however, a matter of policy arises. These witnesses are not always prisoners. They have to be treated in a somewhat different fashion than prisoners; and the protection of their security is a very important consideration, where we are trying this case in the very hotbed of the nazi organization with which some of Defense Counsel were identified.

THE PRESIDENT: I think, Mr. Justice Jackson, that that is sufficient. If you tell the Tribunal that there was no such agreement, the Tribunal, of course, will accept that.

JUSTICE JACKSON: I know of nothing of that character, relating to witnesses, that does apply to that.

We find it very difficult to know just the meaning of the ruling which the Court has just announced. Count One of the Indictment is a conspiracy count, covering the entire substantive part of the Indictment. There are problems, of course, of overlapping, which I had supposed have been worked out between the Prosecutors until this morning. It is impossible, trying a conspiracy case, to keep from mentioning the fact that the act, which was the object of the conspiracy, was performed. In fact, that is a part of the evidence of the conspiracy.

I know I don't need to enlarge upon the wide scope of evidence in a conspiracy case. I think, perhaps, the best way to do, is to swear the witness, and that the other Prosecutors, if they feel their field is being trespassed upon, or the judges, if they feel that we are exceeding, raise the objection specifically; because I don't know how we can separate, particularly on a moment's notice, Count One from the other counts.

We have tried our best to work out an arrangement that would be fair, as between ourselves and the other Prosecutors, but we find it impossible always to please everybody.

With the greatest deference to the ruling of the Court, I would like to suggest that we proceed. I don't know just what the bounds of the ruling might be, but I think the only way we can find out is to proceed,

H0011 - 0065

and have specific objections to the specific things, which anyone feels has transgressed; and in doing that, I want to say that we do it with the greatest respect to the ruling, but that we may find ourselves in conflict with it, because of the difficulty of any boundary on the subject.

H0011 - 0066

THE PRESIDENT: Doctor Stahmer?

DOCTOR STAHMER (Counsel for Defendant Doenitz): Mr. President, I must return to the question raised by Doctor Nelte, namely his assertion that before the beginning of the trial the defense and the Prosecution reached an agreement that the next day's program should be stated to the defense on the day before. Such an agreement was actually reached, and I do not understand, I cannot understand, how this agreement has not reached the attention of the Prosecution. Such an agreement was actually reached, and I cannot understand that the Prosecution should not have been informed of it.

In a conference we considered this probability and were assured by Doctor Kempner, our liaison man, it should be reached. I should therefore like to point out the following:

The Prosecution said that for security reasons the Defence Counsel could not be informed of the next day's proceedings, but we were already informed yesterday, — informed about witnesses who were to be summoned today, that is to say, we were not informed, although this morning I was informed by representatives of the press of the fact that this witness would appear, and saw the statement in the newspaper. Subsequently the objection that such communication could not be made for security reasons does not hold water, and arouses perhaps unjustified distrust of the silence of the Prosecution. Nor is it true that we are receiving documents in time; we still receive those documents too late. Just this morning we received a document which is to be discussed today, and it was also given to us in a language which many of the defendants do not understand, namely, English.

Since I have already submitted this objection in writing I should like the Tribunal to decide this matter as soon as it may.

THE PRESIDENT: Have you finished?

DOCTOR STAHMER: Yes.

JUSTICE JACKSON: It is quite correct that the name of the witness who is to be used today was given to the press. The question of our policy as to giving witnesses names was submitted to me last night

H0011-0067

after court recessed, because we had not been using witnesses heretofore; and I then stated to Colonel Storey that witnesses' names must not be given to the Defense Counsel for security reasons.

He communicated that, I believe, to Doctor Dix. I found that later it had been given to the press. They of course have had adequate information therefore as to this witness. However, I am speaking about the policy. We cannot be under obligation to inform these counsel of the names of witnesses who will be called who are here in Nurnberg, but not in prison; the situation does not permit of that. Neither can we furnish transcripts of testimony or that sort of thing of witnesses in advance.

Now we want to give the Defense Counsel everything that in the fair conduct of the trial they ought to have. They are now receiving much more than any citizen of the United States gets on trial in the courts of the United States, in some respects, as to advance information and copies and help and service, and I do think that to ask us to disclose to them in advance either the names or substance of testimony -- oftentimes the substance would disclose the witness -- would be proper. It was stated yesterday that we would take up a witness today.

THE PRESIDENT: We have already heard two counsel on behalf of the Defense. Have you anything to add which is different to what they have said?

DOCTOR DIX (Counsel for Defendant Schacht): Yes. I believe that I can elucidate a misunderstanding and contribute to the simplification of the whole problem. May I address the Court?

I believe that there is a misunderstanding here. As to what was discussed before I do not know, but the situation so far is the following:

An agreement was reached, or rather an agreement was not reached, between the prosecution and the Defense Counsel, as your Lordship knows. There is, as regarding documents, only an agreement regarding documents, which I do not have to repeat because the Court knows of it. So far as witnesses are concerned I believe that I may presuppose that we are all

H0011-0068

agreed that the wish of the defense to know ahead of time what witnesses will appear is justified.

The high Tribunal must decide to what extent this wish, which is in itself justified, cannot be granted for security reasons. That is a matter which lies outside the determination of the Defense. But I believe that I understood Mr. Justice Jackson correctly in believing that if the press is informed what witnesses will appear the next day, then as a matter of course the same communication should be made to Defense Counsel. But that was only a happy concatenation of circumstances, an accident that can always happen, and which with mutual understanding and goodwill can be obviated in the future. As I said, I do not know what was agreed on before my presence here.

H0011 - 0069

Consequently I cannot contradict my colleague, Doctor Stahmer, in this matter, but it is possible that the misunderstanding arose because the gentleman who agreed the documents should be submitted beforehand and be communicated to us forty-eight hours ahead of time, and that the film was to be shown gives my colleague the impression which I believe is justified that all such documents were to be submitted to them.

After this elucidation of mine I should like only to express the wish that we be informed what witness is to be called as soon as possible; and I express the further wish that security considerations should be guided by the fact that the Defense Counsel are reliable people taking part in a disciplined trial and are determined to assist the progress of the trial, and that subsequently the cases in which the security officer believes that he should not communicate the name of the witness beforehand, that such cases should be reduced to an absolute minimum.

THE PRESIDENT: The Tribunal will consider the submissions which have been made to them on behalf of Defense Counsel with reference to what should or what should not be communicated to them. With reference to the witness whom the United States desire to call, they will now be permitted to call him; and with reference to what I said about confining his evidence to the first count the Tribunal thinks that the best course would be for the other Prosecutors to have the opportunity now to ask any questions which they think right, and that they may have the opportunity, if they wish, of calling the witness later upon their own counts.

As to cross-examination by the Defendants' Counsel, that will be allowed to them in the most convenient way possible, so that if they wish to have an opportunity of communicating with their clients before they cross-examine them they may have the opportunity of doing so. Now we will continue.

COLONEL AMEN: May we have General Lahousen brought before the Tribunal?

THE PRESIDENT: Will you stand in front of the microphone there so that you can be heard?

H0011 - 0070

BY THE PRESIDENT:

Q What is your name?

A Erwin Lahousen.

Q Will you please spell it?

A L-a-h-o-u-s-e-n.

Q Will you say this oath after me? I swear by God--

A I swear by God--

Q --the Almighty and Omniscient,--

A --the Almighty and Omniscient,--

Q --that I will speak the pure truth--

A --that I will speak the pure truth--

Q --and will withhold and add nothing.

A --and will withhold and add nothing.

THE PRESIDENT: Don't you think the witness had better sit down?

COLONEL AMEN: I think he should be allowed to sit down, particularly as he has a heart condition which may be aggravated.

THE PRESIDENT: Very well; you can sit down.

BY COLONEL AMEN:

Q Where were you born?

A I was born in Vienna.

Q On what date?

A The 25th of October 1897.

Q What has been your occupation?

A I was a professional soldier.

Q Where were you trained?

A I was trained in Austria, in the Military Academy in Vienna Neustadt.

Q Are you regularly commissioned as an officer?

A In the year 1915 I was commissioned as lieutenant in the infantry.

Q Did you serve in the first World War?

A Yes, as first and second lieutenant in the infantry.

Q Were you promoted from time to time thereafter?

A Yes, and finally I was promoted according to the normal regulations in Austria at that time.

H0011-0071

Q By 1930 what rank had you attained?

A In the year 1930 I was major--I beg your pardon, I was captain.

Q And commencing in 1930 did you take any additional training?

A In 1930 I entered the Austrian War School, which corresponds to the Military Academy in the German Army. I entered it for instructions to enter the General Staff.

Q How long did this training last?

A This training lasted three years.

Q In 1933 to what regular army unit were you assigned?

A In 1933 I was serving in the Second Austrian Division, the so-called Vienna Division.

Q What type of work did you do there?

A I was intelligence officer; that service for which I was trained

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during my training with the General Staff.

Q. Did you then receive a further promotion?

A. I was promoted in accordance with the regular regulations in Austria, and roughly at the end of 1933 I was a Major. About 1935 or the beginning of 1936 I was taken into the General Staff--and, at any rate, in the summer of 1936 became Lieutenant Colonel in the Austrian General Staff.

Q. And were you assigned to the intelligence division at or about that time?

A. I entered the Austrian Intelligence Service; that corresponds to the-- to what is called in the German Army "Abwehr." I must add that a Nachrichten Abteilung was only added to the Austrian Army in about the time 1936; theretofore there was no such department. And for this reason within the limits of the Austrian Federal Army, that is to say, after the collapse of the Austrian-Hungarian Empire, it was thus the intention to reestablish this department after that, and for that reason I was trained for this department in the recently established Nachrichten Abteilung to organize this service.

Q. After being assigned to the Intelligence Division how were your activities principally directed?

A. My responsible chief, that is to say, the responsible chief was at that time Colonel of the General Staff Boehme; the division chief to whom I was subordinate, the chief of the Intelligence Service, that is to say, the man responsible to me or rather the one to whom I was responsible, from whom I received my orders.

THE PRESIDENT: Can't you shorten this, Colonel Amen? We really needn't have all this detail.

COLONEL AMEN: Very good, Sir. It is, however, I think important for the Tribunal to understand more of this information than you ordinarily would by virtue of the fact that he was taken over subsequently to a corresponding position in the Germar Army, which I did want the Tribunal to appreciate.

BY COLONEL AMEN:

Q. Now, will you state to the Tribunal what your principal activities were after being assigned to the Intelligence Division?

H0011-0073

What information were you interested in and seeking to obtain?

A. If I understand you correctly, I was a member of the Austrian Intelligence Service, that is to say, in the Austrian Intelligence Service and not in the German so-called "Abwehr."

H0011-0074

Q After the Anschluss, what position did you assume?

A After the Anschluss I was automatically taken into the High Command of the German armed forces, and did the same job there. My chief there was Admiral Canaris.

Q And what was the position of Admiral Canaris?

A Canaris was, at that time, Chief of the Bureau of Foreign Abwehr--that is to say, Intelligence.

Q And will you explain briefly the responsibility of the principal departments of the Abwehr under Admiral Canaris?

A When, in 1938, I entered the Ausland's Abwehr, there were three Abwehr divisions. The division called, at that time, "Ausland"--at least, I was acquainted with this organization, as I shall state. How it was before that I cannot say.

Q And what were your duties?

A First of all, I was automatically placed in Abwehr Division I. That is the section that was concerned with collecting information on secret communications. I worked under the Chief, at that time, Chief of Section Colonel-General Pieckenbrock, as well as Canaris, whom I knew from my Austrian past.

Q Admiral Canaris was your immediate superior?

A Admiral Canaris was my immediate superior.

Q From time to time did you act as his personal representative?

A Yes, in all those cases in which his immediate representative--that is, Colonel Pieckenbrock-- was not present, or on those occasions when Canaris, for one reason or another, considered it necessary or advisable to have me appear as his representative.

Q And in this capacity did you have any contact with

H0011-0075

Field Marshal Keitel?

A Yes.

Q. Did you also have contact with Jodl?

A. To a much less extensive degree, but occasionally..

Q. And did you occasionally attend conferences at which Hitler was also present?

A. Yes, I took part in a few of the sessions or meetings at which Hitler was present and which he conducted.

Q. Will you tell the Tribunal whether the leaders of the Abwehr were in sympathy with Hitler's war program?

A. I must state in this regard that we chiefs, at that time, in the Intelligence Department were deeply influenced by the personality of Canaris, his inner orientation, which was perfectly clear to a small group of us.

H0011-0076

Q And was there a particular group or groups in the Abwehr who worked against the Nazis?

A Within the Ausland's Abwehr office there were two groups which, so far as their intentions and actions were concerned, intermingled to a great extent, but which must, nevertheless, be discriminated between.

Q And what were those two groups?

A Before I answer this question, I must discuss, in very brief words, the personality of Canaris, who was the central point and focus of this group.

Q Please make it as brief as you can.

A Canaris was a personality of pure intellect. We relied on his inner, very unique and complicated nature, for this reason. He hated and abominated the war; he hated, also, Hitler, his system, and particularly his methods. Canaris was, in whatever way you may look upon him, a human being.

Q Now, will you refer back to the two groups of which you spoke and tell me about each of those two groups and their respective memberships?

A One might characterize one of the groups as Canaris' circle. It included, in the Ausland's Abwehr, and particularly among the leaders of it, above all, Canaris himself, the spiritual leader of it; the General, at that time, Oster, Chief of the Central Division, the fuehrer of foreign Abwehr; my predecessor, Lieutenant-Colonel Grosskurt, who, along with Canaris in the year 1938, was still in Vienna. Further, the Chief of Abwehr Section I, Colonel Pieckenbrock, who was a close friend of Canaris; Pieckenbrock's successor, Colonel Hansen, who was executed on June 28; my successor, Colonel Freytag-Lorrindhofen, who was executed, or rather, who committed suicide on July 26, before his arrest; then Chief of Abwehr Section III, Colonel Bentivegny. Then there were, in all sections, various people who, for the most part--in connection with the events of July 20--were executed or imprisoned.

In this connection I was not a member of the group I have just mentioned, but I knew of actions which were the prevention of or the failure to follow orders, the contents of which were murder or other atrocities. Chief Buerckner was aware of these things.

H0011-0077

Those are essentially the leaders, whom I knew as members of Canaris' circle.

The second and smaller group was connected with General Oster, who was its spiritual leader; namely, those people in the Amt Ausland's Abwehr who, as early as 1938, could clearly foresee the years 1939 and 1940 and the subsequent consequenced, and who, consequently, took active measures with plans and actions to prevent the conception of this catastrophe by doing away with Hitler by force.

Q What was the purpose of the group to which you belonged; that is, Canaris' inner circle?

A As regards the political motives or aims, I was not oriented. I can only reiterate the train of thought that is best known to me because I was one of Canaris' most intimate confidants. He determined the basic attitude, his inner attitude, which determined the actions not only of myself but of the other people whom I mentioned, an attitude which was known and which is as follows:

We did not succeed in preventing this war of aggression. The war signifies the end of Germany and our own end, and as such it was a misfortune and a catastrophe of the greatest proportions. However, a misfortune that would have been even greater than this catastrophe would have been a triumph of Hitler.

The final meeting and purpose of our group was, with whatever means possible, to prohibit and prevent such a triumph.

What I have just said was often said by Canaris in the group of which I am speaking.

Q. Now, did this group of which you and Canaris were members meet frequently?

A I must explain that this group or this circle is not to be regarded as an organization in the technical

H0011 - 0078

sense, or any sort of conspirators' club. That would have been a basic contradiction of Canaris' essential nature. It was, rather, a spiritual organization of people of the same convictions, of people who were perspicuous, of people who understood and who acted but who maintained, each for himself, his complete inner individuality.

This is the reason for that differentiation of which I spoke at the beginning. Each individual did not demand the same thing; rather, Canaris turned, at any one time, to the person whom he knew from his personal knowledge of the character of that person, to be the person most fit to carry out such and such a task.

Q Did you have conversations at these official meetings, at which Canaris expressed his views with respect to the use of force in Poland, for example?

A These and similar methods were repeatedly, I may say, discussed in our circle. They were, as a matter of course, repudiated.

Q Do you recall what Canaris said about the Polish war at the time of its commencement?

A I remember very well the hour at which Canaris entered, completely broken, and informed us of the fact that the situation had become serious, although it had appeared theretofore that the situation might be saved. He told us that this was the end.

Q Did you have conversations with Canaris and the other members of your group with respect to eliminating Nazis from your staff?

A While I was still in Vienna, before I entered service in the OKW, I received instructions from Canaris to admit into his office in Berlin absolutely no National Socialists. I was also instructed, in my section, whenever it might be possible, to admit no Party members or Party sympathetic officers -- that is, to admit them to high positions. Thus the actual organization -

Q Did Canaris keep a diary?

A Yes, Canaris kept a diary - He had done so even before the beginning of the war - a diary to which I personally contributed many portions.

H0011-0079

Q Was it part of your duties to make entries in that diary?

A No, it was not a part of my immediate duties, but it just turned out as a matter of course that, as regards those conferences which I attended as Canaris' representative, or at which I was present, I recorded such conferences in his diary.

Q And did you keep copies of the entries which you made in Canaris' diary?

A Yes, I kept copies, with Canaris' complete knowledge and approbation.

H0011 - 0080

Q. You have the original of some of those copies with you here today?

A. I do not have them on my person, but they are here at one's disposal.

Q. And you have refreshed your recollection in reference to those entries?

A. Yes.

Q. What was the purpose of Canaris in keeping such a diary?

A. If I answer the question I must, in the interests of truth, repeat the words that Canaris addressed to me on this subject. Others know also what I am saying now.

The purpose of his diary--and it is Canaris' voice speaking now through me--the purpose of his diary was to inform Germany and the world, once and for all, how those people were guilty who were guiding the fate of this people at this time.

Q. Now, do you recall attending conferences with Canaris at the Fuehrer's headquarters just prior to the fall of Warsaw?

A. I and Canaris took part in a conference which did not take place in the Fuehrer's headquarters, but in the so-called Fuehrer's train, and which took place shortly before the fall of Warsaw.

Q. And having refreshed your recollection from reference to the entries in Canaris' diary, can you tell the Tribunal the date of those conferences?

A. According to the notes at my disposal--that is to say, according to Canaris' diary--it was the 12th of September, 1939.

Q. Did each of these conferences take place on the same day?

A. The conferences in the Fuehrer's train took place on September 12.

Q. And was there more than one conference on that day? Were they split into several conferences?

A. I cannot call them sessions; they were discussions, conversations, of some duration, but not actually conferences.

Q. And who was present on this occasion?

A. Present, depending on time and space, were the following: Foreign Minister von Ribbentrop; Keitel, the Chief, at that time, of the

H0011 - 0081

OKW; Chief, at that time, of the Wehrmacht Fuehrungsstab, Jodl; Canaris; and myself.

Q. Do you see Ribbentrop in this court room?

A. Yes.

Q. Will you indicate for the record where he is sitting?

A. Over there--(indicating)--in the first row, third from the left.

Q. Do you also see Keitel in the court room?

A. Yes; he is next to Ribbentrop.

Q. Do you also see Jodl in the court room?

A. Yes; he is in the second row, next to Herr von Papen.

Q. Now, to the best of your knowledge and recollection, will you please explain, in as much detail as possible, to the Tribunal, exactly what was said and what took place at this conference in the Fuehrer's train?

H0011-0082

A First of all, Canaris had a short talk with Foreign Minister Ribbentrop, particularly as regards the Poland regions. These political aims came up in the following conference at that time of the OKW. He explained them. In fact, as established by the notes I took on Admiral Canaris' commission immediately after the conference, while we were still in the train of the Chief at that time of the OKW, Canaris expressed serious scruples regarding the bombardment of Warsaw. Canaris pointed out the devastating foreign political repercussions of such a bombardment. The Chief at that time of the OKW, Keitel, answered that these measures had been agreed on and established directly between Goering and Hitler and that he, Keitel had had no influence on these decisions. He said at that time -- and this I can repeat only after having read my notes -- the Fuehrer and Goering telephoned frequently back and forth; sometimes I also found out something about what was said, but not always.

Secondly, Canaris warned vehemently against the measures that he, namely Canaris, had found out about, to wit: the projected shooting and extermination measures that were being directed particularly against the Polish intelligentsia, nobility and clergy, as well as all elements that could be regarded as embodiments of the national resistance movement. Canaris said at that time, more or less verbatim, the world will at some time make the armed forces under whose eyes these events have occurred also responsible for these events.

The Chief at that time of the OKW replied -- and what I am now going to say is based on my notes - that these things had already been determined by the Fuehrer and that the Fuehrer, the Commander in Chief of the army, had made it known that if the armed forces did not want to have any part in these things, it would have to satisfy itself with the fact that the SS and the SIPO and such organizations should appear at the same time on the field with it and that these organizations would then carry out these measures. Thus, all military commanders would be given a corresponding civilian official. That is to say, on the extermination measures and the policy of shooting.

Q Was anything said about a so-called political house-cleaning?

H0011 - 0083

A Yes, the Chief at that time of the OKW used in this connection an expression which, at any rate, had its origin in Hitler and which characterized these measures as "political house-cleaning". This expression remains very clearly in my recollection without the aid of my notes.

Q In order that the record may be perfectly clear, exactly what measures did Keitel say had already been agreed upon.

A According to the Chief at that time of the OKW, it had already been agreed upon as regards the bombardment of Warsaw and as regards the shooting of those categories of people who I characterized before.

Q And what were they?

A Above all, the Polish intelligentsia, nobility, clergy, and, of course, the Jews.

Q What, if anything, was said about cooperation with a Ukrainian group?

A The Chief at that time of the OKW specified it as a continuation of a directive that apparently he had received from Ribbentrop in connection with the political intentions of the Foreign Minister. He explained them in connection with the Foreign Ministry. Keitel explained that in the Ukraine a resistance movement was to be called forth that should have as its goal the extermination of Poles and Jews.

Q At what point did Hitler and Jodl enter the meeting?

A Hitler and Jodl, entered either after what I have just described took place, or just at the conclusion of this discussion, and Canaris had already begun his report on the situation in the West: that is to say, the news that had come in in the meantime regarding the attitude of the French army at the West Wall.

Q And what further discussions then took place?

A After this discussion in the department of the Chief at that time of the OKW, Canaris left the train and had a short talk with Ribbentrop, who, returning to the scene of the Ukraine, told him once more that the uprising or the resistance movement

H0011-0084

must be so arranged -- and what I say now is well known to me and well recollected -- should be so arranged that all houses and all dwellings of the Poles should be consumed by fire.

Q Who said that?

A The Foreign Minister at that time, Ribbentrop, said that to Canaris. I was standing next to him.

Q Is there any slightest doubt in your mind about that?

A No. I am not in the slightest doubt about that. I remember it with particular clarity. I remember it in particular because of the formulation that all dwellings should go up in flames because previously the talk had been of such things as liquidation.

Q Was there any note in Canaris' diary which helped to refresh your recollection on that point also?

A No.

Q What, if anything, was said on the subject of France?

A As regards France adiscussion was carried on in the Chief of the OKW' s train. Canaris presented the matter in this way; namely according to his information, a great attack in the region of Saarbruecken was being prepared by the French. In this conversation, Hitler, who had entered the room in the meantime, took over the conversation and expressed an opinion different from that which Canaris had just expressed, giving arguments which, as I look back on it now, I must recognize as factually correct.

Q Do you recall whether in the course of this conference, Ribbentrop said anything about the Jews?

A During the conversation which was taking place in the train of the Chief of the OKW, Ribbentrop was not present.

Q Do you recall whether at any time in the course of conferences Ribbentrop said anything about the Jews?

A In this discussion -- namely, the one that took place in the train, no.

Q For purposes of keeping the record straight, whenever you have referred to the Chief of the OKW, you were referring to Keitel?

H0011-0085

A Yes.

Q Was the Wehrmacht ever asked for any assistance for the Polish campaign?

A Yes.

Q Did that undertaking have any special name?

A As it is recorded in the diary of my section, the name of this undertaking that took place just before the Polish campaign, was given the name Himmler.

Q Will you explain to the Tribunal the nature of the assistance required?

A The matter in which I am now giving testimony is one of the most mysterious actions which took place in the atmosphere of the Abwehr office. Sometime -- I believe it was the middle of August -- the precise date can be found in the diary of the section, the Abwehr Section, as well as my section, Abwehr Section 2, was charged with the job of turning over Polish uniforms and equipment, as well as identification cards and so on, to turn over such things to Himmler or to make them available to him. As the diary which I kept -- or the diary which I did not keep, my representative Canaris received it from the Wehrmacht Fuehrungs Stab or from the Landesverteidigung -- National Defense.

Q Do you know where this request originated?

A Whence the request originated I cannot say. I can only say again it reached us in the form of an order. It was, to be sure, an order on which we, those chiefs of sections who came into the question, had our own notions, without knowing what in the last analysis it was about, but the name Himmler was eloquent enough. In the notes and diary of the section, expression is given to the fact that I asked the question why Mr. Himmler was to receive uniforms from us.

Q To whom was the Polish material to be furnished by the Abwehr?

A These articles of equipment had to be prepared, and one day some man from the SS or the SD -- the name is on the official diary of the War Department -- fetched them.

H0011 - 0086

Q At what time was the Abwehr informed as to how this Polish material was to be used?

A The real purpose which we do not know in its details even today was concealed from us. We at that time had a very understandable suspicion that something crooked was afoot, particularly because of the name of the undertaking.

Q Did you subsequently find out from Canaris what in fact had happened?

A The actual course of events was the following: When the first bulletin came that spoke of the attack of Polish units on German territory, Pieckenbrock, who had the report in his hand, observed that it was the uniforms that we had provided that appeared in this action. Whether it was on the same day or a few days later, I can not say at this time, but at any rate Canaris discovered that it was these uniforms in which people from concentration camps had been disguised and had pretended to make a military attack on the radio station at Gleiwitz.

Although we were greatly interested, particularly General Oster, to know the details of this action; that is, to know where it occurred and what happened in detail, as a matter of fact, we could imagine it, but we did not know for sure.

Q Did you ever find out what happened to the men from the concentration camps that wore the Polish uniforms and created the incident?

A Because I was interested in this matter, after the capitulation, I spoke about these matters in the hospital in which I was confined with the SS Hauptsturmfuehrer who was there then, and I asked him how events had actually taken place. The man--his name was Birckel--told me, "It is peculiar but even we in our circles only found out about these matters much, much later, and then what we did find out was only by implication. So far as I know, all members of the SD who took part in that action were put out of the way; that is to say, were killed." That is the last that I heard of this matter.

Q Do you recall attending a meeting in 1940 at which the name of Weygand was under discussion?

A Yes.

H0011 – 0087

Q Do you happen to recall the particular month in which this discussion took place?

A The discussion took place in the winter of 1940, either November or December. I have the precise date in my personal notes; also, with Canaris' knowledge.

Q To the best of your knowledge and recollection, who was present?

A At that time, as was usual almost every day at the conferences which took place at the camp, the three chiefs of sections and the Chief of the Ausland Section, Admiral or Captain Buerckner.

Q What were you told at this meeting by Canaris?

A In this conversation Canaris told us that sometime ago he was put under pressure by Keitel to execute an action that would lead to the elimination of the French Marshall Weygand. I--that is to ssy, my section, was charged with the execution of this task.

Q When you say "elimination", what do you mean?

A Killing.

Q What was Weygand doing at this time?

A Weygand was, so far as I recall, at that time in North Africa.

Q What was the reason given for attempting to kill Weygand?

A The reason was given as the fear that the unbeaten part of the French army in North Africa might find in Weygand a point of crystalization. That, of course, is only the main outline of what I still remember today. It may be that there are other reasons that contributed.

Q After you were so informed by Canaris, what else was said at this meeting?

A That such statements were made so openly by a representative of the armed forces was heard with abomination by all those present and repudiated. I, myself, as the person in question, stated that I should not permit that my department should be commissioned with this task. I reacted quite naturally and said that it did not even occur to me to carry out this order, that my section and my officers are fighters but they are not a murderers' organization or murderers.

Q What then did Canaris say?

A Canaris said roughly, "Calm down. We'll talk it over later."

H0011-0088

Q Did you then talk it over later with Canaris?

A After the other gentlemen had left the room, I spoke alone with Canaris. Canaris told me immediately, "It is a matter of course that this order will not only not be carried out; it will not even be communicated further," and that is also what happened.

Q Were you subsequently questioned as to whether you had carried out this order?

A At the audience that Canaris had with Keitel, at which I was present, I was spoken to by the Chief of the OKW, at that time Keitel, on this subject. He asked me what had happened or what had been undertaken so far as this matter was concerned. The date of this event is recorded in my notes, with Canaris' knowledge and with his commission.

Q What reply did you make to Keitel?

A Naturally I can not recall the precise words I spoke, but one thing is certain; I certainly did not answer that I had no intention of carrying out this order. I didn't do it and could not do it; otherwise, I should not be sitting here today. Probably, as in many similar cases, I gave the answer that it was very difficult but whatever was possible would be done, or something of that sort. Naturally, I can

H0011-0089

not recall my precise words.

Q Incidentally, are you the only one of this intimate Canaris group who is still alive today?

A I believe that I am at least one of the very few. Possibly Popenkof is still alive; perhaps, Bentoveni, who, however, did not belong to the inner circle. Most of the others fell as a result of the events of July 20.

COLONEL AMEN: I have another subject to take up now. I don't know if you want me to start in before recess.

THE PRESIDENT: We will continue until 12:45.

(Further examination of the witness by Colonel Amen.)

Q In 1941 did you attend a conference at which General Reinecke was present?

A Yes.

Q Who was General Reinecke?

A General Reinecke was at that time Chief of the General Army Office; that is to say, a member of the OKW.

Q Do you recall the approximate date of that meeting ?

A It was roughly in the summer of 1941, but rather soon after the beginning of the Russian campaign. Perhaps July.

Q To the best of your knowledge and recollection, will you state exactly who was present at that conference?

A At this conference, which is also recorded in the notes taken for Canaris, in which I participated as his representative, the following were present:
General Reinecke as the presiding officer,
Obergruppenfuehrer Mueller of the SD, Colonel Breuer representing the office in charge of prisoners of war, and I as a representative of Canaris.

Q Will you explain who Mueller was and why he was

H0011-0090

at this meeting?

A Mueller was an official in the main office of Reichsecurity and took part in the session because he was responsible for the execution of the measures regarding the treatment of the Russian prisoners.

Q Will you explain who Colonel Breuer was and why he was there?

A Colonel Breuer was in charge of prisoners of war. I do not know in which precise department. He took care of questions regarding prisoners of war.

Q What was the purpose of this conference?

A The purpose of this conference was to examine the command that had been given regarding the treatment of prisoners of war and also to give some foundation to these commands.

Q Did you learn from the conversation at this conference what the substance of these orders under discussion was?

A Their contents included essentially two groups of measures that were to be taken. First of all was the killing of Russian commissars. Second was the killing of all those elements among the Russian prisoners of war who, according to a special treatment, could be identified as Bolshevists or as active representatives of the Bolshevistic attitude toward life.

Q Did you also learn from the conversation the basis for these orders?

A The basis for these orders was explained by General Reinecke in its essential features as this: That the war between Germany and Russia was not a war between two states or two armies but between two attitudes toward the world, namely, the National Socialist and the

H0011-0091

Bolshevistic. The Red Army soldier was not to be looked upon as a soldier in the ordinary sense of the word such as our western opponents but as an ideological enemy. That is, as an enemy-to-the-death of National Socialism, and he was to be treated accordingly.

Q Did Canaris tell you why he was selecting you to go to this conference?

A Canaris gave me two or perhaps three reasons for this action, although he was himself present in Berlin. First, he wanted to avoid a personal contact or touch with Reinecke, whom he regarded as the prototype of the National Socialist generals and to whom he was personally very antipathetic. Secondly, he told me and ordered me that it was to be my guiding principle to attempt through factual argument--that is to say, through appeals to reason--to set myself against this brutal and senseless order or at least to mitigate its evil effects so far as that might be possible. He as section chief could by no means be as daring as I, who, thanks to my subordinate position, could use much stronger language.

H0011-0092

Thirdly, he was well acquainted with my inner attitude, an attitude that I manifested wherever practical, in my many trips to the front and in my contacts with Russian prisoners of war. This fact is also clearly recorded.

Q Did Canaris and the other members of your group have a particular name for Reinecke?

A Not only in our group but in a much larger circle, he was called the "small" or the "other Keitel".

Q Prior to your going to this conference, did Canaris make any other comment on these orders?

A Even at the time when these orders were given, Canaris said to our circle--and when I say our circle I mean the section chiefs--Canaris took a position of sharp opposition to this command and protested through Buerckner. I can not say now whether that was done in writing or orally, whether that was communicated to Keitel in writing or orally. I don't know that, but at any rate, Buerckner communicated it to Keitel.

Q When you say "protested through Buerckner", what do you mean?

A When I say Buerckner, I mean the group or perhaps even a representative in his office.

Q Will you repeat that?

A This protest or this counter-argument and the question regarding the treatment of the Russian prisoners of war was communicated by Canaris via the Foreign Office, Ausland Amt and, through Buerckner, communicated further. The Ausland office had a section that dealt with questions of international law. The expert in that section was Count Moltke who, as well as other people, belonged to

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Oster's inner circle. After July 20 he was executed.

THE PRESIDENT: Would that be a convenient time to break off?

COLONEL AMEN: Yes, sir.

THE PRESIDENT: Until 2.00 o'clock.

(Whereupon the Tribunal recessed)